

**Title 38: WATERS AND NAVIGATION**  
**Chapter 24: SOLID WASTE MANAGEMENT AND RECYCLING**

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**Maine Revised Statutes**  
**Title 38: WATERS AND NAVIGATION**  
**Chapter 24: SOLID WASTE MANAGEMENT AND RECYCLING**

**Subchapter 1: GENERAL PROVISIONS**

**§2101. SOLID WASTE MANAGEMENT HIERARCHY**

**1. Priorities.** It is the policy of the State to plan for and implement an integrated approach to solid waste management for solid waste generated in this State and solid waste imported into this State, which must be based on the following order of priority:

- A. Reduction of waste generated at the source, including both amount and toxicity of the waste; [1989, c. 585, Pt. A, §7 (NEW).]
- B. Reuse of waste; [1989, c. 585, Pt. A, §7 (NEW).]
- C. Recycling of waste; [1989, c. 585, Pt. A, §7 (NEW).]
- D. Composting of biodegradable waste; [1989, c. 585, Pt. A, §7 (NEW).]
- E. Waste processing that reduces the volume of waste needing land disposal, including incineration; and [2007, c. 583, §7 (AMD).]
- F. Land disposal of waste. [1989, c. 585, Pt. A, §7 (NEW).]

It is the policy of the State to use the order of priority in this subsection as a guiding principle in making decisions related to solid waste management.

[ 2007, c. 583, §7 (AMD) .]

**2. Waste reduction and diversion.** It is the policy of the State to actively promote and encourage waste reduction measures from all sources and maximize waste diversion efforts by encouraging new and expanded uses of solid waste generated in this State as a resource.

[ 2007, c. 192, §2 (NEW) .]

**SECTION HISTORY**

1989, c. 585, §A7 (NEW). 2007, c. 192, §2 (AMD). 2007, c. 583, §7 (AMD).

**§2101-A. DEFINITIONS**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 465, Pt. A, §28 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

**1. Agency.**

[ 1995, c. 656, Pt. A, §34 (RP) .]

**2. Office.**

[ 2011, c. 655, Pt. GG, §70 (AFF); 2011, c. 655, Pt. GG, §27 (RP) .]

**3. Bureau.** "Bureau" means the Bureau of General Services within the Department of Administrative and Financial Services as authorized pursuant to Title 5, section 1742.

[ 2011, c. 655, Pt. GG, §28 (NEW); 2011, c. 655, Pt. GG, §70 (AFF) .]

#### SECTION HISTORY

1995, c. 465, §A28 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A34 (AMD). 2011, c. 655, Pt. GG, §§27, 28 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## §2101-B. FOOD RECOVERY HIERARCHY

**1. Priorities.** It is the policy of the State to support the solid waste management hierarchy in section 2101 by preventing and diverting surplus food and food scraps from land disposal or incineration in accordance with the following order of priority:

- A. Reduction of the volume of surplus food generated at the source; [2015, c. 461, §1 (NEW) .]
- B. Donation of surplus food to food banks, soup kitchens, shelters and other entities that will use surplus food to feed hungry people; [2015, c. 461, §1 (NEW) .]
- C. Diversion of food scraps for use as animal feed; [2015, c. 461, §1 (NEW) .]
- D. Utilization of waste oils for rendering and fuel conversion, utilization of food scraps for digestion to recover energy, other waste utilization technologies and creation of nutrient-rich soil amendments through the composting of food scraps; and [2015, c. 461, §1 (NEW) .]
- E. Land disposal or incineration of food scraps. [2015, c. 461, §1 (NEW) .]

[ 2015, c. 461, §1 (NEW) .]

**2. Guiding principle.** It is the policy of the State to use the order of priority in this section, in conjunction with the order of priority in section 2101, as a guiding principle in making decisions related to solid waste and organic materials management.

[ 2015, c. 461, §1 (NEW) .]

#### SECTION HISTORY

2015, c. 461, §1 (NEW).

## §2102. ESTABLISHMENT OF THE MAINE WASTE MANAGEMENT AGENCY (REPEALED)

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A29 (RP).

## §2103. POWERS AND DUTIES OF THE AGENCY (REPEALED)

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1989, c. 890, §§A40,B288 (AMD). 1991, c. 517, §§B5,6 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A30 (RP).

## **§2104. WASTE MANAGEMENT ADVISORY COUNCIL**

***(REPEALED)***

### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

## **§2105. PAYMENT IN LIEU OF TAXES**

***(REPEALED)***

### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

## **§2106. ANNUAL AUDIT**

***(REPEALED)***

### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

## **§2107. STAFF EMPLOYEES; CONFLICT OF INTEREST**

***(REPEALED)***

### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

## **§2108. INDEMNIFICATION**

***(REPEALED)***

### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

## **§2109. SUNSET**

***(REPEALED)***

### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

## **§2110. CONFIDENTIAL INFORMATION**

***(REPEALED)***

### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A31 (RP).

## §2111. ACQUISITION OF SOLID WASTE AND RESIDUE HAULING ASSETS (REPEALED)

### SECTION HISTORY

1999, c. 773, §1 (NEW). 2001, c. 42, §1,2 (AMD).

## §2112. SMALL CONTAINER CONTRACT RESTRICTIONS

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Small container" means a 2- to 10-cubic-yard container or dumpster. [2003, c. 338, §1 (NEW) .]

B. "Small containerized solid waste hauling service" means providing solid waste hauling service to customers by providing the customer with a small container or dumpster that is picked up and emptied mechanically using a front-loading or rear-loading truck. "Small containerized solid waste hauling service" does not include hand pickup service or service using a compactor that is attached to or part of a small container. [2003, c. 338, §1 (NEW) .]

C. "Solid waste hauling service" means the collection, removal and transportation to a solid waste transfer station or disposal site of trash and garbage. As used in this paragraph, trash and garbage do not include construction and demolition debris, medical waste, hazardous waste, organic waste, special waste such as contaminated soil or sludge or recyclable materials. [2003, c. 338, §1 (NEW) .]

[ 2003, c. 338, §1 (NEW) .]

**2. Contracts.** Contracts for the provision of small containerized solid waste hauling service to customers located in this State are governed by the following provisions.

A. If a contract under this subsection contains an automatic renewal provision, the contractor shall notify the customer by mail between 60 and 90 days prior to the contract termination date that if the customer does not, within 60 days of receipt of the contractor's notification, notify the contractor of the customer's intention to terminate the contract, the contract will be automatically renewed. Notice of termination by the customer may be by any reasonable method, including mail, electronically transmitted facsimile and e-mail. A contract may not contain terms that require a customer to provide notice of termination prior to the time frames provided for in this paragraph. [2003, c. 338, §1 (NEW) .]

B. The financial charge for early termination of a contract under this subsection may not exceed 3 times the current monthly charge. [2003, c. 338, §1 (NEW) .]

C. A contract under this subsection may not require the customer to inform a contractor concerning prices or other terms offered by competitors or require the customer to afford the contractor an opportunity to match or respond to a competitor's offer. [2003, c. 338, §1 (NEW) .]

[ 2005, c. 220, §1 (AMD) .]

### SECTION HISTORY

2003, c. 338, §1 (NEW). 2005, c. 220, §1 (AMD).

## Subchapter 2: SOLID WASTE PLANNING

## §2121. OFFICE OF PLANNING (REPEALED)

### SECTION HISTORY



1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A33 (RP).

## §2122. STATE WASTE MANAGEMENT AND RECYCLING PLAN

The department shall prepare an analysis of, and a plan for, the management, reduction and recycling of solid waste for the State. The plan must be based on the priorities and recycling goals established in sections 2101 and 2132. The plan must provide guidance and direction to municipalities in planning and implementing waste management and recycling programs at the state, regional and local levels. [2011, c. 655, Pt. GG, §29 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

**1. Consultation.** In developing the state plan the department shall solicit public input and may hold hearings in different regions of the State.

[ 2011, c. 655, Pt. GG, §29 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**2. Revisions.** The department shall revise the analysis by January 1, 2014 and every 5 years after that time to incorporate changes in waste generation trends, changes in waste recycling and disposal technologies, development of new waste generating activities and other factors affecting solid waste management as the department finds appropriate.

[ 2011, c. 655, Pt. GG, §29 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1991, c. 528, §E40 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §E40 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A34 (RPR). 1995, c. 588, §2 (AMD). 2011, c. 655, Pt. GG, §29 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## §2123. PLAN CONTENTS

*(REPEALED)*

### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1991, c. 517, §C1 (AMD). 1993, c. 310, §A3 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A35 (RP).

## §2123-A. STATE PLAN CONTENTS

The state plan includes the following elements. [1995, c. 465, Pt. A, §36 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

**1. Waste characterization.** The state plan must be based on a comprehensive analysis of solid waste generated, recycled and disposed of in the State. Data collected must include, but not be limited to, the source, type and amount of waste currently generated; and the costs and types of waste management employed including recycling, composting, landspreading, incineration or landfilling.

[ 1995, c. 465, Pt. A, §36 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

**2. Waste reduction and recycling assessment.** The state plan must include an assessment of the extent to which waste generation could be reduced at the source and the extent to which recycling can be increased.

[ 1995, c. 465, Pt. A, §36 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

**3. Determination of existing and potential disposal capacity.** The state plan must identify existing solid waste disposal and management capacity within the State and the potential for expansion of that capacity.

[ 1995, c. 465, Pt. A, §36 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

**4. Projected demand for capacity.** The state plan must identify the need in the State for current and future solid waste disposal capacity by type of solid waste, including identification of need over the next 5-year, 10-year and 20-year periods.

[ 1995, c. 465, Pt. A, §36 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

#### SECTION HISTORY

1995, c. 465, §A36 (NEW). 1995, c. 465, §C2 (AFF).

### §2123-B. REVIEW OF POLICY

*(REPEALED)*

#### SECTION HISTORY

1995, c. 588, §3 (NEW). 1999, c. 527, §1 (AMD). 2007, c. 192, §3 (RP).

### §2123-C. SOLID WASTE MANAGEMENT ADVISORY COUNCIL

*(REPEALED)*

#### SECTION HISTORY

2007, c. 192, §4 (NEW). 2011, c. 655, Pt. EE, §30 (AFF). 2011, c. 655, Pt. EE, §26 (RP).

### §2124. REPORTS

The department shall submit the plan and subsequent revisions to the Governor and the joint standing committee of the Legislature having jurisdiction over natural resource matters. [2011, c. 655, Pt. GG, §30 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §A37 (AMD). 1995, c. 465, §C2 (AFF). 2011, c. 655, Pt. GG, §30 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

### §2124-A. SOLID WASTE GENERATION AND DISPOSAL CAPACITY REPORT

By January 1, 2013 and annually thereafter, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters and the Governor setting forth information on statewide generation of solid waste, statewide recycling rates and available disposal capacity for solid waste. [2011, c. 655, Pt. GG, §31 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

The report submitted under this section must include an analysis of how changes in available disposal capacity have affected or are likely to affect disposal prices. When the department determines that a decline in available landfill capacity has generated or has the potential to generate supracompetitive prices, the department shall include this finding in its report and shall include recommendations for legislative or regulatory changes as necessary. [2011, c. 655, Pt. GG, §31 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

The report submitted under this section must include an analysis of how the rate of fill at each solid waste landfill has affected the expected lifespan of that solid waste landfill and an analysis of consolidation of ownership in the disposal, collection, recycling and hauling of solid waste. [2013, c. 300, §19 (AMD) .]

The joint standing committee of the Legislature having jurisdiction over solid waste matters may report out legislation related to the report submitted pursuant to this section. [2007, c. 583, §8 (NEW) .]

#### SECTION HISTORY

1995, c. 588, §4 (NEW). 2003, c. 338, §2 (AMD). 2007, c. 192, §5 (AMD). 2007, c. 583, §8 (AMD). 2011, c. 655, Pt. GG, §31 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2013, c. 300, §§19, 20 (AMD).

### **§2125. EVALUATION OF MUNICIPAL IMPLEMENTATION OF SOLID WASTE MANAGEMENT HIERARCHY**

*(REPEALED)*

#### SECTION HISTORY

RR 1993, c. 1, §136 (COR). 1993, c. 298, §1 (NEW). 1995, c. 465, §A38 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A35 (RP).

## Subchapter 3: WASTE REDUCTION AND RECYCLING

### **§2131. OFFICE OF WASTE REDUCTION AND RECYCLING; ESTABLISHED**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A40 (RP).

### **§2132. STATE GOALS**

**1. State recycling goal.** It is the goal of the State to recycle or compost, by January 1, 2021, 50% of the municipal solid waste tonnage generated each year within the State.

[ 2015, c. 461, §2 (AMD) .]

#### **1-A. State waste reduction goal.**

[ 2015, c. 461, §3 (RP) .]

**1-B. State waste disposal reduction goal.** It is the goal of the State to reduce the statewide per capita disposal rate of municipal solid waste tonnage to 0.55 tons disposed per capita by January 1, 2019 and to further reduce the statewide per capita disposal rate by an additional 5% every 5 years thereafter. The baseline for calculating this reduction is the 2014 solid waste generation and disposal capacity data gathered by the department.

[ 2015, c. 461, §4 (NEW) .]

**2. Goal revision.** The department shall recommend revisions, if appropriate, to the state recycling goal and waste disposal reduction goal established in this section. The department shall submit its recommendations and any implementing legislation to the joint standing committee of the Legislature having jurisdiction over natural resource matters.

[ 2015, c. 461, §5 (AMD) .]

**3. Beneficial use of waste.** The use of waste paper, waste plastics, waste wood, including wood from demolition debris, used motor vehicle tires or corrugated cardboard as a fuel in industrial boilers or waste-to-energy facilities for the generation of heat, steam or electricity constitutes recycling only for the purposes of determining whether the goals in subsection 1 are met and for determining municipal progress as provided in section 2133. In order for the use of waste under this subsection to constitute recycling, the department must determine that there is no reasonably available market in the State for recycling that waste and the wastes must be incinerated as a substitute for, or supplement to, fossil or biomass fuels incinerated in the industrial boiler or waste-to-energy facility.

[ 2011, c. 655, Pt. GG, §32 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**4. Reduction in dioxin.** It is the policy of the State to reduce the total release of dioxin and mercury to the environment with the goal of its continued minimization and, where feasible, ultimate elimination.

[ 2001, c. 277, §3 (NEW) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1991, c. 492, §3 (AMD). 1991, c. 517, §B7 (AMD). 1995, c. 23, §1 (AMD). 1995, c. 465, §§A41,42 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 552, §1 (AMD). 2001, c. 22, §§2,3 (AMD). 2001, c. 277, §3 (AMD). 2005, c. 220, §§2-4 (AMD). 2011, c. 655, Pt. GG, §32 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2015, c. 461, §§2-5 (AMD).

## §2133. MUNICIPAL RECYCLING

### 1. Technical and financial assistance program.

[ 1995, c. 465, Pt. A, §43 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

**1-A. Recycling progress.** Municipalities are not required to meet the state recycling goal in section 2132, but they must demonstrate reasonable progress toward that goal. The department shall determine reasonable progress.

[ 2011, c. 655, Pt. GG, §33 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

### 2. Recycling feasibility studies.

[ 1995, c. 465, Pt. A, §45 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

**2-A. Assistance with managing solid waste.** The department shall assist municipalities with managing solid waste. The department may also provide planning assistance to municipalities and regional organizations for managing municipal solid waste. Planning assistance may include cost and capacity analysis and education and outreach activities. The department shall provide assistance pursuant to this subsection in accordance with the waste management hierarchy in section 2101. Preference in allocating resources under this section must be given to municipalities that take advantage of regional economies of scale.

[ 2013, c. 300, §21 (AMD) .]

**2-B. Household hazardous waste collection.** The department may, within available resources, award grants to eligible municipalities, regional associations, sanitary districts and sewer districts for household hazardous waste collection and disposal programs. In implementing this program, the department shall attempt to:

- A. Coordinate the household hazardous waste collection programs with overall recycling and waste management; [1995, c. 465, Pt. A, §46 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]
- B. Encourage regional economies of scale; [1995, c. 465, Pt. A, §46 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]
- C. Coordinate programs between private and public institutions; [1999, c. 779, §3 (AMD).]
- D. Maximize opportunities for federal grants and pilot programs; and [1999, c. 779, §3 (AMD).]
- E. By January 1, 2002 and as necessary thereafter, fund capital improvements and operating expenses to facilitate the development of collection programs throughout the State for hazardous waste that is universal waste, as identified in board rules, generated by households, small-quantity generators, public schools and municipalities. [1999, c. 779, §3 (NEW).]

At a minimum, the department shall award grants to public schools and municipalities for reasonable costs incurred as a result of managing waste mercury-added products generated by those public schools and municipalities, in compliance with the requirements in sections 1663 and 1664, that would not otherwise be incurred by complying with existing laws, rules or regulations as of July 15, 2002.

[ 2013, c. 300, §22 (AMD) .]

**2-C. Business technical assistance program.** The department may, as resources allow, assist the business community to develop state programs and services that are designed to promote the solid waste hierarchy and that are desired by and financially supported by the business community. The department shall coordinate these efforts in conjunction with the department.

[ 2011, c. 655, Pt. GG, §33 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**2-D. Preference for other state grants and investments.**

[ 2013, c. 300, §23 (RP) .]

**3. Recycling capital investment grants.** The department may make grants to eligible municipalities, regional associations, sanitary districts and sewer districts for the construction of public recycling and composting facilities and the purchase of recycling and composting equipment. The department may establish requirements for local cost sharing of up to 50% of the total grant amount.

[ 2011, c. 655, Pt. GG, §33 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**4. Recycling incentives.** The department shall develop and implement a program of incentives to encourage public recycling programs to reach maximum feasible levels of recycling and to meet the recycling goal of section 2132.

A. [1993, c. 298, §2 (RP).]

B. [1995, c. 465, Pt. A, §48 (RP); 1995, c. 465, Pt. C, §2 (AFF).]

[ 2011, c. 655, Pt. GG, §33 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

### 5. Access to state waste disposal services.

[ 1995, c. 465, Pt. A, §49 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

**6. Recycling demonstration grants.** The department may make demonstration grants to eligible municipalities, regional associations or other public organizations to pilot waste reduction, recycling and composting programs and to test their effectiveness and feasibility.

[ 2011, c. 655, Pt. GG, §33 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**7. Recycling progress reports.** Municipalities shall report annually, on forms provided by the department, on their solid waste management and recycling practices. The annual report must include how much of each type of solid waste is generated and how that solid waste is managed. The department shall assist municipal reporting by developing a municipal waste stream assessment model. The model must rely on actual waste data whenever possible, but incorporate default generation estimates when needed. Default generation estimates must incorporate factors such as commercial activity, geographical differences and municipal population.

[ 2011, c. 655, Pt. GG, §33 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1991, c. 517, §§B8-11 (AMD). 1993, c. 298, §2 (AMD). 1995, c. 465, §§A43-50 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §§A36-38 (AMD). 1997, c. 672, §4 (AMD). 1999, c. 385, §§4,5 (AMD). 1999, c. 779, §3 (AMD). 2001, c. 626, §21 (AMD). 2003, c. 567, §§1,2 (AMD). 2011, c. 655, Pt. GG, §33 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2013, c. 300, §§21-23 (AMD).

## §2134. MARKETING ASSISTANCE

The department shall provide marketing assistance, which may include the following elements:

[2011, c. 655, Pt. GG, §34 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

### 1. Collection.

[ 1995, c. 465, Pt. A, §51 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

### 2. Incentive program.

[ 1995, c. 465, Pt. A, §51 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

**3. Information clearinghouse.** An information clearinghouse on recycling markets to improve the marketing of materials to be recycled. The department shall maintain a current list of municipal recycling programs, together with a description of the recyclable materials available through the programs. The department shall also maintain listings of brokers, handlers, processors, transporters and other persons providing services and potential markets for recyclable materials. The department shall actively promote the services of the clearinghouse and shall seek to match programs with appropriate recycling businesses. The department shall make its information on recycling services available to public and private solid waste generators seeking markets or services for recyclable materials. The department shall make its technical reports and planning documents available to municipalities and regional associations on a timely basis; and

[ 2011, c. 655, Pt. GG, §35 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**4. Brokering service.** Provision for marketing and brokering services for materials when municipal and regional association efforts to market the material and the information clearinghouse are inadequate.

[ 1995, c. 656, Pt. A, §39 (AMD) .]

**5. Marketing development plan.**

[ 1995, c. 465, Pt. A, §51 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

**6. Reuse of waste.**

[ 1995, c. 656, Pt. A, §39 (RP) .]

**SECTION HISTORY**

1989, c. 585, §A7 (NEW). 1995, c. 465, §A51 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A39 (AMD). 2011, c. 655, Pt. GG, §§34, 35 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## **§2135. SPECIAL SERVICES**

*(REPEALED)*

**SECTION HISTORY**

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A52 (RP).

### **§2135-A. TIRE MANAGEMENT PROGRAM**

*(REPEALED)*

**SECTION HISTORY**

1991, c. 517, §A3 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A53 (RP).

### **§2136. SCRAP METAL TRANSPORTATION COST SUBSIDY**

*(REPEALED)*

**SECTION HISTORY**

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A54 (RP).

## **§2137. STATE GOVERNMENT RECYCLING AND WASTE REDUCTION**

The Department of Administrative and Financial Services shall assess the status of recycling efforts undertaken directly by the State for its own solid waste and shall evaluate existing programs and develop necessary new programs for recycling to reduce the generation of solid waste by the State. [1995, c. 656, Pt. A, §40 (AMD).]

**1. Waste reduction and recycling plan.**

[ 1995, c. 465, Pt. A, §55 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

**2. Capitol complex recycling program.**

[ 1995, c. 465, Pt. A, §55 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

**3. Recycling.** Each state agency shall establish and implement a source separation and collection program for recyclable materials produced as a result of agency operations, including, at a minimum, high grade paper and corrugated paper. The source separation and collection program must include, at a minimum, procedures for collecting and storing recyclable materials, bins or containers for storing materials, and contractual and other arrangements with buyers. Each agency shall appoint a recycling coordinator for every 50 employees at a minimum and shall conduct educational programs for its employees on the recycling program.

[ 1995, c. 465, Pt. A, §55 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

**4. Waste reduction.** Each state agency shall establish and implement a waste reduction program for materials used in the course of agency operations. The program must be designed and implemented to achieve the maximum feasible reduction of waste generated as a result of agency operations.

[ 1995, c. 465, Pt. A, §55 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

**5. University of Maine System.** The following provisions apply to the University of Maine System.

A. [1995, c. 465, Pt. A, §55 (RP); 1995, c. 465, Pt. C, §2 (AFF).]

B. Each campus of the University of Maine System shall establish and implement a source separation and collection program for recyclable materials, including at a minimum high grade paper, corrugated paper and glass. The source separation and collection program must include procedures for collecting and storing recyclable materials, bins or containers for storing materials and contractual and other arrangements with buyers. Each campus shall appoint a recycling coordinator and shall conduct educational programs for students and employees on the recycling program. [1995, c. 465, Pt. A, §55 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

C. Each campus of the University of Maine System shall establish and implement a waste reduction program for materials used in the course of its operations. The program must be designed and implemented to achieve the maximum feasible reduction of waste. [1995, c. 465, Pt. A, §55 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

D. Each campus of the University of Maine System shall establish a leaf composting program. [1995, c. 465, Pt. A, §55 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

E. Each campus of the University of Maine System shall assess the status of its recycling efforts, evaluate existing programs and, within available resources, develop necessary new programs for recycling to reduce the generation of solid waste by the campus. [1995, c. 465, Pt. A, §55 (NEW); 1995, c. 465, Pt. C, §2 (AFF).]

[ 1995, c. 465, Pt. A, §55 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §A55 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A40 (AMD).

## §2138. OFFICE PAPER RECYCLING PROGRAM

**1. Office paper recycling mandated.** Any person employing 15 or more people at a site within the State shall implement an office paper and corrugated cardboard recycling program.

A. [1995, c. 465, Pt. A, §56 (RP); 1995, c. 465, Pt. C, §2 (AFF).]

B. [1995, c. 465, Pt. A, §56 (RP); 1995, c. 465, Pt. C, §2 (AFF).]

C. [1995, c. 465, Pt. A, §56 (RP); 1995, c. 465, Pt. C, §2 (AFF).]



The department may provide technical and marketing assistance and direction to entities within the State to assist with meeting this requirement. Municipalities and regional associations may assist employers in attaining the objectives of this section.

[ 2011, c. 655, Pt. GG, §36 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**2. Office paper.** For the purposes of this section, "office paper" includes, but is not limited to, ledger, computer and bond paper.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

### **3. Certification of tax credit.**

[ 2011, c. 548, §34 (RP) .]

### **4. Technical and financial assistance programs.**

[ 1995, c. 465, Pt. A, §56 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

### **5. Industrial waste reduction.**

[ 1995, c. 465, Pt. A, §56 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

### **6. Beneficial use of office paper.**

[ 1995, c. 465, Pt. A, §56 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

#### **SECTION HISTORY**

1989, c. 585, §A7 (NEW). 1991, c. 492, §4 (AMD). 1995, c. 465, §A56 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A41 (AMD). 2011, c. 548, §34 (AMD). 2011, c. 655, Pt. GG, §36 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## **§2139. PUBLIC EDUCATION**

*(REPEALED)*

#### **SECTION HISTORY**

1989, c. 585, §A7 (NEW). 1989, c. 700, §A170 (AMD). 1995, c. 465, §A57 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A42 (RP).

## **§2140. INTERSTATE AND NATIONAL INITIATIVES**

The department may participate in interstate and national initiatives to adopt uniform state laws when practicable, and to enter compacts between the State and other states for the improved management, recycling and reduction of solid waste. [2011, c. 655, Pt. GG, §37 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

#### **SECTION HISTORY**

1989, c. 585, §A7 (NEW). 1995, c. 656, §A43 (AMD). 2011, c. 655, Pt. GG, §37 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## **§2141. WASTE REDUCTION AND RECYCLING LABELING PROGRAM**

*(REPEALED)*

## SECTION HISTORY

1991, c. 463, (NEW). 1991, c. 644, §§2-4 (AMD). 1993, c. 310, §A4 (RP).

## §2142. ADVERTISING AND MARKETING CLAIMS; WASTE REDUCTION AND RECYCLING

A person who labels, advertises or promotes a product in violation of guidelines for the use of environmental marketing claims published by the Federal Trade Commission in 16 Code of Federal Regulations, Part 260 (1993), as amended, commits a violation of the Maine Unfair Trade Practices Act. [1993, c. 310, Pt. A, §5 (NEW).]

## SECTION HISTORY

1993, c. 310, §A5 (NEW).

## §2143. CELLULAR TELEPHONE RECYCLING

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Cellular telephone" means a mobile wireless telephone device that is designed to send or receive transmissions through a cellular radiotelephone service as defined in 47 Code of Federal Regulations, Section 22.99 (2005). "Cellular telephone" does not include a wireless telephone device that is integrated into the electrical architecture of a motor vehicle. [2007, c. 343, §1 (NEW).]

B. "Cellular telephone service provider" means a provider of wireless voice or data retail service. [2007, c. 343, §1 (NEW).]

C. "Retailer" means a person, firm or corporation that sells or offers to sell a cellular telephone to a consumer at retail. [2007, c. 343, §1 (NEW).]

[ 2007, c. 343, §1 (NEW) .]

**2. Collection system.** Effective January 1, 2008, a retailer shall accept, at no charge, used cellular telephones from any person. A retailer required to accept used cellular telephones under this subsection shall post, in a prominent location open to public view, a notice printed in boldface type and containing the following language: "We accept used cellular telephones at no charge."

[ 2007, c. 343, §1 (NEW) .]

**3. Disposal ban.** Effective January 1, 2008, a person may not dispose of a cellular telephone in solid waste for disposal in a solid waste disposal facility.

[ 2007, c. 343, §1 (NEW) .]

**4. Reports.** By January 1, 2009, and every year thereafter, a cellular telephone service provider shall report to the department the number of cellular telephones collected pursuant to this section and how the collected cellular telephones were disposed of, reused or recycled. Annually, the department shall report on the collection system to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report may be included in the report required pursuant to section 1772, subsection 1.

[ 2013, c. 315, §8 (AMD) .]

## SECTION HISTORY

2007, c. 343, §1 (NEW). 2013, c. 315, §8 (AMD).

## §2144. STEWARDSHIP PROGRAM FOR ARCHITECTURAL PAINT

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Architectural paint" or "paint" means interior and exterior architectural coatings sold in containers of 5 gallons or less and does not mean industrial, original equipment or specialty coatings, arts and crafts paints, 2-component coatings, deck cleaners, industrial maintenance coatings, original equipment manufacturer paints and finishes, paint additives, colorants, tints, resins, roof patch and repair, tar and bitumen-based products, traffic and road marking paints, wood preservatives, ignitable paint thinners or solvents used for cleaning paint-related equipment or contaminated with architectural paint or paint thinners or solvents identified as hazardous waste in 40 Code of Federal Regulations, Section 261.31 that are used for cleaning paint-related equipment or contaminated with architectural paint. [2015, c. 331, §1 (AMD).]

A-1. "Collection container" means a container that is designed to store more than one individual container of architectural paint that meets federal Department of Transportation specifications for containing those items. [2015, c. 331, §2 (NEW).]

A-2. "Collection site" means an entity that collects post-consumer paint directly from consumers for end-of-life management and may include, but is not limited to, retailers, hardware and home improvement stores, transfer stations and operations that otherwise collect household hazardous waste. A collection site may also accept universal wastes under the rules of the department. [2015, c. 331, §2 (NEW).]

A-3. "Conditionally exempt small quantity generator" means a conditionally exempt small quantity generator as defined in 40 Code of Federal Regulations, Section 261.5. [2015, c. 331, §2 (NEW).]

B. "Consumer" means a purchaser or user of architectural paint. "Consumer" includes a purchaser or user of architectural paint who also generates post-consumer paint. [2015, c. 331, §3 (AMD).]

C. "Distributor" means a business that has a contractual relationship with one or more producers to market and sell architectural paint to retailers in the State. [2013, c. 395, §1 (NEW).]

D. "Energy recovery" means recovery in which all or a part of solid waste materials is processed in order to use the heat content or other forms of energy of or from the materials. [2013, c. 395, §1 (NEW).]

E. "Environmentally sound management practices" means procedures for the collection, storage, transportation, reuse, recycling and disposal of post-consumer paint to be implemented by a producer or a representative organization to ensure compliance with all applicable federal, state and local laws, regulations, rules and ordinances and protection of human health and the environment. Such procedures must address adequate record keeping, tracking and documenting the fate of materials within the State and beyond and adequate environmental liability coverage for professional services and for the operations of the contractors working on behalf of the producer or the representative organization. [2013, c. 395, §1 (NEW).]

F. "Final disposition" means the point beyond which no further processing takes place and paint has been transformed for direct use as a feedstock in producing new products or is disposed of, including for energy recovery, in permitted facilities. [2013, c. 395, §1 (NEW).]

G. "Paint stewardship assessment" means the amount added to the purchase price of architectural paint sold in the State necessary to cover the cost of collecting, transporting and processing post-consumer paint statewide under a paint stewardship program. [2013, c. 395, §1 (NEW).]

H. "Paint stewardship program" or "program" means a program for management of post-consumer paint to be operated by a producer or a representative organization. [2013, c. 395, §1 (NEW).]

I. "Plan" means a plan to establish a paint stewardship program. [2013, c. 395, §1 (NEW).]

J. "Population center" means an urbanized area or urban cluster as defined by the United States Department of Commerce, Bureau of the Census to identify areas of high population density and urban land use with a population of 2,500 or greater. [ 2013, c. 395, §1 (NEW). ]

K. "Post-consumer paint" means architectural paint not used and no longer wanted by a consumer. [ 2013, c. 395, §1 (NEW). ]

K-1. "Post-consumer paint that is a hazardous waste" means post-consumer paint that is a hazardous waste as defined in 40 Code of Federal Regulations, Part 261, Subparts C and D. [ 2015, c. 331, §4 (NEW). ]

L. "Producer" means a manufacturer of architectural paint that sells, offers for sale, or distributes that paint in the State under the producer's own name or brand. [ 2013, c. 395, §1 (NEW). ]

M. "Recycling" means any process by which discarded products, components and by-products are transformed into new, usable or marketable materials in a manner in which the original products may lose their identity but does not include energy recovery or energy generation by means of combusting discarded products, components and by-products with or without other waste products. [ 2013, c. 395, §1 (NEW). ]

N. "Representative organization" means a nonprofit organization created by producers to operate a paint stewardship program. [ 2013, c. 395, §1 (NEW). ]

O. "Retailer" means a person that offers architectural paint for sale at retail in the State. [ 2013, c. 395, §1 (NEW). ]

P. "Reuse" means the return of a product into the economic stream for use in the same kind of application as originally intended, without a change in the product's identity. [ 2013, c. 395, §1 (NEW). ]

Q. "Sell" or "sale" means any transfer of title for consideration, including remote sales conducted through sales outlets, catalogues or the Internet or any other similar electronic means. [ 2013, c. 395, §1 (NEW). ]

[ 2015, c. 331, §§1-4 (AMD). ]

**2. Establishment of a paint stewardship program.** By April 1, 2015, a producer, a group of producers or a representative organization shall submit a plan for the establishment of a paint stewardship program to the commissioner for approval. The plan must include:

A. A description of how the program will collect, transport, recycle and process post-consumer paint from entities covered by the program for end-of-life management to meet the following goals:

- (1) A reduction in the generation of unwanted paint and the promotion of its reuse and recycling;
- (2) Provision of convenient and available statewide collection of post-consumer paint from entities covered by the program in all areas of the State;
- (3) Management of post-consumer paint using environmentally sound management practices in an economically sound manner, including following the paint waste management hierarchy of source reduction, reuse, recycling, energy recovery and disposal;
- (4) Establishment of a process for managing paint containers collected under the program, including recycling all recyclable containers;
- (5) Negotiation and execution by the operator of agreements to collect, transport, reuse, recycle, burn for energy recovery and dispose of post-consumer paint using environmentally sound management practices; and
- (6) Provision of education and outreach efforts by the operator to promote the program. The education and outreach efforts must include strategies for reaching consumers in all areas of the State and the method the program will use to evaluate the effectiveness of its education and outreach efforts; [ 2013, c. 395, §1 (NEW). ]

B. Contact information for all persons that will be responsible for the operation of the paint stewardship program and a list of paint brands and producers covered under the program; [2013, c. 395, §1 (NEW).]

C. Goals as may be practical to reduce the generation of post-consumer paint, to promote the reuse and recycling of post-consumer paint, for the overall collection of post-consumer paint and for the proper end-of-life management of post-consumer paint. The goals may be revised by a representative organization based on information collected annually; [2013, c. 395, §1 (NEW).]

D. A list of all potential processors that will be used to manage post-consumer paint collected by the paint stewardship program, a list of each collection site name and location that will accept post-consumer paint under the program and a list of all processors that will be used for final disposition; [2013, c. 395, §1 (NEW).]

E. A method to determine the number and geographic distribution of paint collection sites based on the use of geographic information modeling. The plan must provide that at least 90% of state residents have a permanent paint collection site within a 15-mile radius of their residences, unless the commissioner determines that the 90% requirement is not practicable due to geographical constraints. If the commissioner determines the 90% requirement is not practicable, the commissioner may approve a plan that includes a geographic distribution of paint collection sites that is practicable. The distribution of paint collection sites must include at least one additional paint collection site for each 30,000 residents in a population center that is located to provide convenient and reasonably equitable access for residents within the population center unless otherwise approved by the commissioner; [2013, c. 395, §1 (NEW).]

F. Identification of the ways in which the program will coordinate with existing solid waste collection programs and events, including strategies to reach the State's residents that do not have a permanent paint collection site within a 15-mile radius of their residences and to ensure adequate coverage of service center communities as defined in Title 30-A, section 4301, subsection 14-A; [2013, c. 395, §1 (NEW).]

G. A time frame for accomplishing the geographical coverage required under paragraphs E and F; [2013, c. 395, §1 (NEW).]

H. An anticipated budget for operation of the paint stewardship program, including the suggested method of funding the program, which must include the method of calculating a paint stewardship assessment that meets the requirements of subsection 4; and [2015, c. 331, §5 (AMD).]

I. A description of how post-consumer paint collected under this section will be managed at each collection site, including how post-consumer paint will be labeled, provisions for secondary containment and protecting post-consumer paint from weather and a description of how subsection 5-A, paragraph G will be satisfied. [2015, c. 331, §5 (AMD).]

J. [2015, c. 331, §6 (RP).]

K. [2015, c. 331, §6 (RP).]

[2015, c. 331, §§5, 6 (AMD).]

**3. Approval of plan.** The commissioner shall review a plan submitted under subsection 2 and make a determination of whether to approve the plan within 120 days of receipt. The commissioner shall make the plan available for public review for at least 30 days prior to making a determination of whether to approve the plan. The commissioner shall approve a plan if the commissioner determines that the plan demonstrates the ability of the paint stewardship program to meet the goals specified in subsection 2, paragraph A and meets the other requirements for submission of a plan under subsection 2. The commissioner's approval of a plan must include approval of the method by which the program will be funded. The commissioner shall require the person submitting the plan to provide an independent audit indicating the appropriateness of the proposed paint stewardship assessment.

If a plan is rejected, the commissioner shall provide the reasons for rejecting the plan to the person submitting the plan. The person submitting the plan may submit an amended plan within 60 days of a rejection.

[ 2013, c. 395, §1 (NEW) .]

**4. Funding of paint stewardship program.** An operator of a paint stewardship program shall administer a paint stewardship assessment for all architectural paint sold in the State. The amount of the paint stewardship assessment must be approved by the commissioner under subsection 3 and must be sufficient to recover, but may not exceed, the cost of the paint stewardship program. If the funds generated by the program exceed the amount necessary to operate the program, excess funds must be used to reduce future paint stewardship assessments or improve services under the program.

A. A paint stewardship assessment must be added to the cost of all architectural paint sold to retailers and distributors in the State. A retailer or distributor shall add the paint stewardship assessment to the consumer's purchase price of the architectural paint sold by that retailer or distributor. A producer or a representative organization may not charge a paint stewardship assessment at the time of post-consumer paint collection. The collection of the paint stewardship assessment must commence no later than the implementation date established in subsection 5, paragraph A. [2013, c. 395, §1 (NEW) .]

B. An architectural paint producer participating in a representative organization shall remit to the representative organization payment of the paint stewardship assessment for each container of architectural paint it sells in the State. [2013, c. 395, §1 (NEW) .]

[ 2013, c. 395, §1 (NEW) .]

**5. Operation of paint stewardship program.** A paint stewardship program must be operated as follows.

A. Unless an earlier implementation date is proposed in a plan and approved by the commissioner, beginning July 1, 2015 or 3 months after a plan is approved by the commissioner under subsection 3, whichever occurs later, a producer or a representative organization shall implement the plan. If an earlier implementation date is proposed in a plan and approved by the commissioner, a producer or representative organization shall implement the plan beginning on that date. [2013, c. 483, §1 (AMD) .]

B. Upon implementation of the plan, a producer may not sell or offer for sale architectural paint in the State unless the producer or a representative organization of which the producer is a member participates in a paint stewardship program. A representative organization shall notify the department of all producers participating in a paint stewardship program operated by the representative organization. [2013, c. 395, §1 (NEW) .]

C. A producer or a representative organization shall provide consumers and retailers with educational materials regarding the paint stewardship assessment and paint stewardship program. Such materials must include, but are not limited to, information regarding available end-of-life management options for architectural paint offered through the paint stewardship program, promoting waste prevention, reuse and recycling and notifying consumers that a charge for the operation of the paint stewardship program is included in the purchase price of all architectural paint sold in the State. These materials may include, but are not limited to, the following:

- (1) Signage that is prominently displayed and easily visible to the consumer;
- (2) Printed materials and templates of materials for reproduction by retailers to be provided to the consumer at the time of purchase or delivery;
- (3) Advertising or other promotional materials that include references to the paint stewardship program; and

(4) A manual for paint retailers providing collection site procedures to ensure the use of environmentally sound management practices when handling architectural paints. [ 2013 , c . 395 , §1 (NEW) . ]

D. A producer or a representative organization that organizes the collection, transportation and processing of post-consumer paint, in accordance with a paint stewardship program, is immune from liability for any claim of a violation of antitrust, restraint of trade or unfair trade practice, including claims pursuant to Title 10, chapter 201, arising from conduct undertaken in accordance with the paint stewardship program. [ 2013 , c . 395 , §1 (NEW) . ]

E. By October 15, 2016, and annually thereafter, the operator of a paint stewardship program shall submit a report to the commissioner regarding the paint stewardship program. If implementation of a plan begins before December 31, 2014, the commissioner may establish an earlier date for submission of the initial report. The report must include, but is not limited to:

- (1) A description of the methods used to collect, transport, reduce, reuse and process post-consumer paint in the State;
- (2) The volume of post-consumer paint collected in the State;
- (3) The volume and type of post-consumer paint collected in the State by method of disposition, including reuse, recycling and other methods of processing;
- (4) The total cost of implementing the paint stewardship program, as determined by an independent financial audit funded from the paint stewardship assessment. The report of total cost must include a breakdown of administrative, collection, transportation, disposition and communication costs;
- (5) A summary of outreach and educational activities undertaken and samples of educational materials provided to consumers of architectural paint;
- (6) The total volume of post-consumer paint collected by the paint stewardship program and a breakdown of the volume collected at each collection site;
- (7) Based on the paint stewardship assessment collected by the paint stewardship program, the total volume of architectural paint sold in the State during the preceding year;
- (8) A list of all processors, including recyclers and disposers, used to manage post-consumer paint collected by the paint stewardship program in the preceding year up to the paint's final disposition, the volume each processor accepted and the disposition method used by each processor; and
- (9) An evaluation of the effectiveness of the paint stewardship program compared to prior years and anticipated steps, if any are needed, to improve performance throughout the State. [ 2015 , c . 331 , §7 (AMD) . ]

F. Reports submitted to the department under this section must be made available to the public on the department's publicly accessible website, except that proprietary information submitted to the department in a plan, in an amendment to a plan or pursuant to reporting requirements of this section that is identified by the submitter as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

As used in this paragraph, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. [ 2013 , c . 395 , §1 (NEW) . ]

G. A producer or representative organization shall submit to the department for approval a request to amend an approved plan if the producer or representative organization proposes to:

- (1) Change the paint stewardship assessment;
- (2) Cover an additional product under the plan; or

(3) Modify the goals of the plan. [2013, c. 395, §1 (NEW).]

[2015, c. 331, §7 (AMD).]

**5-A. Requirements for collection sites.** This subsection applies to collection sites.

A. Within 30 days of commencement of an approved paint stewardship program, a producer or representative organization shall notify the department of the name and location of each collection site added to or deleted from the list of collection sites provided under subsection 2, paragraph D. [2015, c. 331, §8 (NEW).]

B. A collection site shall track all outgoing shipments of post-consumer paint on a manifest or a bill of lading. The collection site shall maintain these records for at least 3 years. [2015, c. 331, §8 (NEW).]

C. A collection site shall maintain a record for each drop-off of post-consumer paint that is a hazardous waste from an entity other than a household, including the name and address of the entity, the date of the drop-off and a description and quantity of the post-consumer paint that is a hazardous waste. The collection site shall maintain these records for at least 3 years. [2015, c. 331, §8 (NEW).]

D. A collection site shall store post-consumer paint in structurally sound collection containers that show no visible evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions, in a secure area, away from ignition sources, storm drains and floor drains. A collection container must be kept closed except when adding containers of post-consumer paint that have been collected from consumers. A collection container must be labeled with the words "Waste Paint." A collection site may not store more than 5,000 kilograms of post-consumer paint that is a hazardous waste at any one time. A collection site may store collected post-consumer paint that is a hazardous waste for up to one year. [2015, c. 331, §8 (NEW).]

E. A collection site may accept post-consumer paint that is a hazardous waste only from households and from conditionally exempt small quantity generators. [2015, c. 331, §8 (NEW).]

F. A collection site shall immediately contain and clean up any discharge or release of post-consumer paint that is a hazardous waste. [2015, c. 331, §8 (NEW).]

G. A collection site shall limit its activities to the collection and storage of post-consumer paint, except that transfer stations and operations that otherwise collect household hazardous waste may remove post-consumer paint that is a hazardous waste from the paint's original container and mix or consolidate that paint, as long as all transfer and mixing or consolidation activities are conducted over secondary containment and as long as any discharges or releases of hazardous waste, as defined in 40 Code of Federal Regulations, Part 261, Subparts C and D, are contained and cleaned up to the department's satisfaction. [2015, c. 331, §8 (NEW).]

H. A collection site shall ensure that it receives training from the producer or representative organization that implements the paint stewardship program on how to properly inspect and store post-consumer paint and shall maintain training manuals issued by the producer or representative organization. [2015, c. 331, §8 (NEW).]

I. A collection site shall ship post-consumer paint that is a hazardous waste to a universal waste consolidation facility or to a recycling, treatment, storage or disposal facility that is authorized to receive universal waste. [2015, c. 331, §8 (NEW).]

J. A collection site that accepts only post-consumer paint and post-consumer paint that is a hazardous waste under an approved plan from households and from conditionally exempt small quantity generators is not a central accumulation facility and does not require a hazardous waste identification number from the federal Environmental Protection Agency. Nothing in this section is intended to exempt a collection



site from being considered a central accumulation facility or from being required to obtain a hazardous waste identification number based on activities unrelated to a paint stewardship program. [ 2015, c. 331, §8 (NEW) . ]

[ 2015, c. 331, §8 (NEW) . ]

**6. Administration and enforcement of program.** The department shall enforce this section and may adopt rules as necessary for the purposes of implementing, administering and enforcing this section.

A. Except as may otherwise be required under federal law or by the producer or representative organization under an approved plan, the department may not impose a requirement by rule or otherwise on a collection site regarding the collection, handling, record-keeping, storage or shipping of post-consumer paint that is more stringent than the requirements of this section for collection sites. [ 2015, c. 331, §9 (NEW) . ]

B. A collection site that complies with the requirements of this section and that uses environmentally sound management practices is not subject to penalties for violation of the department's rules related to post-consumer paint. [ 2015, c. 331, §9 (NEW) . ]

C. The department shall charge a reasonable fee to be paid by an applicant for approval of a paint stewardship program for review of the plan. The department may establish a reasonable annual fee to cover the actual costs for annual report review, oversight, administration and enforcement. Fees established under this paragraph may not exceed the greater of \$82,000 per year and 1% of total program costs as set forth in the independent financial auditing report required under subsection 5. [ 2015, c. 331, §9 (NEW) . ]

[ 2015, c. 331, §9 (AMD) . ]

**7. Retailers.** Unless an earlier implementation date is approved by the commissioner pursuant to subsection 5, paragraph A, beginning July 1, 2015 or 3 months after a plan is approved by the commissioner under subsection 3, whichever occurs later, a retailer may not sell architectural paint unless, on the date the retailer orders the architectural paint from the producer or its agent, the producer or the paint brand is listed on the department's publicly accessible website as implementing or participating in an approved paint stewardship program. A retailer may participate as a paint collection point pursuant to the paint stewardship program on a voluntary basis and pursuant to all applicable laws and rules. A retailer that collects post-consumer paint must follow a collection site procedure manual developed by a producer or representative organization to ensure the use of environmentally sound management practices when handling architectural paints at collection locations. If an earlier implementation date is approved by the commissioner pursuant to subsection 5, paragraph A, the provisions of this subsection apply with respect to the plan as of that date.

[ 2013, c. 483, §3 (AMD) . ]

**8. List of producers and brands.** The department shall post on its publicly accessible website a list of the producers participating and the brands included in a paint stewardship program.

[ 2013, c. 395, §1 (NEW) . ]

**9. Relationship to other product stewardship program laws.** A paint stewardship program established pursuant to this section is governed by the provisions of this section and is exempt from any requirements related to product stewardship programs established under chapter 18 unless otherwise specifically provided.

[ 2013, c. 395, §1 (NEW) . ]

**10. Rules.** The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2013, c. 395, §1 (NEW) .]

#### SECTION HISTORY

2013, c. 395, §1 (NEW). 2013, c. 483, §§1-3 (AMD). 2015, c. 331, §§1-9 (AMD).

## Subchapter 4: FACILITY SITING AND DEVELOPMENT

### §2151. OFFICE OF SITING AND DISPOSAL OPERATIONS

*(REPEALED)*

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A59 (RP).

### §2151-A. INDEMNIFICATION

The department shall defend and indemnify any employee of the bureau and any former employee of the former State Planning Office including the director and any member of the former Facility Siting Board against expenses actually and necessarily incurred by the person in connection with the defense of any action or proceeding in which the person is made party by reason of past or present association with the bureau or former State Planning Office with regard to the powers and duties set forth in this article. [2011, c. 655, Pt. GG, §38 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

#### SECTION HISTORY

1995, c. 465, §A60 (NEW). 1995, c. 465, §C2 (AFF). 2011, c. 655, Pt. GG, §38 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

### §2152. FACILITY SITING BOARD

*(REPEALED)*

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §A61 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 502, §E32 (AMD). 1999, c. 556, §41 (AMD). 2001, c. 352, §16 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2011, c. 655, Pt. GG, §39 (RP).

### §2153. SITING CRITERIA

**1. Siting criteria.** With regard to state-owned facilities, the bureau shall administer rules adopted by the former Maine Waste Management Agency, Office of Siting and Disposal Operations and subsequently administered by the former State Planning Office pursuant to this subsection for siting criteria for solid waste disposal facilities. The bureau may revise rules as necessary based on the following factors.

A. A site may be located anywhere within the State and need not be in proximity to the site of waste generation. [1991, c. 794, §2 (AMD).]

A-1. Sites for the disposal of special waste may not be located within a 5-mile radius of an existing commercial special waste landfill or a commercial incineration facility. [1995, c. 465, Pt. C, §2 (AFF).]

B. To the extent possible, a site must be located in proximity to the transportation systems, including existing or potential railroad systems, that are used to convey waste to the site or to convey residuals and materials to be recycled from the site. [1991, c. 794, §2 (AMD).]

C. The capacity or size of a site must be consistent with the projected demand as determined in the state plan. [1989, c. 585, Pt. A, §7 (NEW).]

D. A site and its considered use must be consistent with, and actively support, other waste management objectives, including waste reduction and recycling. [1989, c. 585, Pt. A, §7 (NEW).]

E. The projected price for site development, construction and operation must be fair and reasonable. [1989, c. 585, Pt. A, §7 (NEW).]

F. A site must meet preliminary environmental standards developed jointly by the department and the Maine Land Use Planning Commission, including ground water standards, geological standards and standards to protect public drinking water supplies. [1991, c. 794, §2 (AMD); 2011, c. 682, §38 (REV).]

G. Existing uses on adjacent properties, including public or private schools, may not be in significant conflict with or significantly jeopardized by the use of a site. [1991, c. 794, §2 (AMD).]

[ 2011, c. 655, Pt. GG, §40 (AMD); 2011, c. 655, Pt. GG, §70 (AFF); 2011, c. 682, §38 (REV) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1991, c. 794, §2 (AMD). 1995, c. 465, §A62 (AMD). 1995, c. 465, §C2 (AFF). 2011, c. 655, Pt. GG, §40 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2011, c. 682, §38 (REV).

## §2154. SITE SELECTION

**1. Initial site screening.** The bureau shall conduct a site screening and selection process to identify solid waste disposal capacity sufficient to meet the projected needs identified in the state planning process under section 2123-A, subsection 4. The bureau shall consider the need for geographic distribution of facilities to adequately serve all regions of the State. The bureau also shall consider in its site selection process the need for landfill capacity to dispose of incinerator ash resulting from the combustion of domestic and commercial solid waste generated within its jurisdiction. Prior to recommending a site, the bureau shall hold a public hearing in every municipality or plantation identified in the screening process as a potential site. For potential sites within an unincorporated township, the bureau shall hold a public hearing within the vicinity of the proposed site. Prior to submitting a recommended site to the department for review, the bureau must find that the recommended site meets the standards adopted under section 2153.

[ 2011, c. 655, Pt. GG, §41 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**2. Siting; general.** Subsequent to the siting process under subsection 1, the bureau shall identify additional sites as requested by the department and as capacity needs are identified in the state plan. The bureau shall employ the same criteria and considerations employed under subsection 1. The bureau shall hold a public hearing in each municipality within which the bureau may recommend the location of any solid waste disposal or refuse-derived fuel processing facility.

[ 2011, c. 655, Pt. GG, §41 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**3. Municipal reimbursement.** At the conclusion of proceedings before the bureau conducted pursuant to subsection 1, the bureau shall reimburse a municipality for eligible expenses incurred as a result of that municipality's direct, substantive participation in proceedings before the bureau. The amount reimbursed

under this subsection may not exceed \$50,000 for any municipality. For the purposes of this subsection, "eligible expenses" has the same meaning as "expenses eligible for reimbursement" under section 1310-S, subsection 4 and any rules adopted by the Board of Environmental Protection pursuant to that section.

[ 2011, c. 655, Pt. GG, §41 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1991, c. 243, §1 (AMD). 1991, c. 794, §§3,4 (AMD). 1991, c. 794, §9 (AFF). 1995, c. 465, §A63 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §§A44,45 (AMD). 2011, c. 655, Pt. GG, §41 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## §2155. NOTIFICATION

The bureau shall notify the municipal officers of any municipality within which a waste disposal facility site is recommended under this subchapter of that recommendation. The bureau shall notify the municipal officers by certified mail within 30 days of making the recommendation. If the proposed site is located within the jurisdiction of the Maine Land Use Planning Commission, the bureau shall notify the Maine Land Use Planning Commission and the county commissioners in lieu of the municipal officers. [2011, c. 655, Pt. GG, §42 (AMD); 2011, c. 655, Pt. GG, §70 (AFF); 2011, c. 682, §38 (REV).]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 2011, c. 655, Pt. GG, §42 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2011, c. 682, §38 (REV).

## §2156. FACILITY DEVELOPMENT

*(REPEALED)*

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1991, c. 243, §2 (AMD). 1991, c. 517, §C2 (AMD). 1991, c. 794, §5 (AMD). 1995, c. 465, §§A64,65 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 588, §5 (RP).

## §2156-A. FACILITY DEVELOPMENT

**1. Planning for development.** The bureau, in consultation with the department, shall plan for the development of facilities sufficient to meet needs for municipal solid waste identified in the state plan and any revisions to the plan and to serve all geographic areas of the State. The bureau, in consultation with the department, may plan for the development of facilities sufficient to meet needs for special waste identified in the state plan and any revisions to the plan and to serve all geographic areas of the State.

[ 2011, c. 655, Pt. GG, §43 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**2. Recommendation for development.** When the bureau finds that 6 years or less of licensed and available disposal capacity for municipal solid waste or special waste remains within the State, the bureau shall submit a report recommending the construction and operation of a state-owned solid waste disposal facility for the disposal of the type of waste for which capacity is needed to the joint standing committee of the Legislature having jurisdiction over natural resource matters. The report must recommend which state agency or department will own the facility and how it will be operated. The report must also include a review of disposal options outside of the State; a review of existing efforts to reduce, reuse, recycle, compost and incinerate the affected municipal solid waste and special waste streams and the impact of these efforts on capacity requirements; a thorough economic analysis of the facility's expected costs; and commitments

from entities to utilize the facility and projected revenues. It is the intent of the Legislature that the facility be operated by a private contractor. A state-owned solid waste disposal facility may not be constructed or operated unless authorized by legislation pursuant to subsection 3.

[ 2011, c. 655, Pt. GG, §43 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**3. Authorization for development.** The joint standing committee of the Legislature having jurisdiction over natural resource matters may report out legislation authorizing construction and operation of a state-owned solid waste disposal facility in response to a report submitted pursuant to subsection 2.

[ 1995, c. 588, §6 (NEW) .]

**4. Ownership, construction and operation.** The bureau shall maintain ownership of a site acquired for construction and operation of a state-owned solid waste disposal facility until the Legislature authorizes transfer of the site to another state department or agency, except that this subsection does not prohibit any lease or transfer of the site pursuant to an agreement entered into before the effective date of this subsection or pursuant to any amendment to such an agreement entered into before or after the effective date of this subsection.

[ 2011, c. 655, Pt. GG, §43 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**5. Development by others.** This section does not preclude a municipality or regional association from developing and operating solid waste disposal facilities on its own initiative.

[ 1995, c. 588, §6 (NEW) .]

#### SECTION HISTORY

1995, c. 588, §6 (NEW). 1999, c. 736, §1 (AMD). 2007, c. 192, §6 (AMD). 2011, c. 655, Pt. GG, §43 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## §2157. REVIEW OF PROPOSED WASTE FACILITIES

*(REPEALED)*

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1989, c. 869, §C11 (AMD). 1989, c. 890, §§A40,B289 (AMD). 1991, c. 66, §A41 (AMD). 1991, c. 517, §B12 (AMD). 1993, c. 732, §B3 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A66 (RP).

## §2158. FUTURE COMMERCIAL SOLID WASTE DISPOSAL FACILITIES

*(REPEALED)*

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1989, c. 890, §§A40,B290 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A67 (RP).

## §2159. REAL AND PERSONAL PROPERTY; RIGHT OF EMINENT DOMAIN

The bureau may acquire and hold real and personal property that it considers necessary for its purposes, is granted the right of eminent domain and, for those purposes, may take and hold, either by exercising its right of eminent domain or by purchase, lease or otherwise, for public use, any land, real estate, easements or

interest therein, necessary for constructing, establishing, maintaining, operating and the closure of solid waste disposal facilities. [2011, c. 655, Pt. GG, §44 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 656, §A46 (AMD). 2011, c. 655, Pt. GG, §44 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## §2160. PROCEDURE IN EXERCISE OF RIGHT OF EMINENT DOMAIN

The right of eminent domain granted in section 2159 may only be exercised after complying with the following procedures. [1989, c. 585, Pt. A, §7 (NEW).]

**1. Notice to owner.** The bureau shall provide to the owner or owners of record notice of the following:

A. The determination of the bureau that it proposes to exercise the right of eminent domain; [2011, c. 655, Pt. GG, §45 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

B. A description and scale map of the land or easement to be taken; [1989, c. 585, Pt. A, §7 (NEW).]

C. The final amount offered for the land or easement to be taken, based on the fair value as estimated by the bureau; and [2011, c. 655, Pt. GG, §45 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

D. Notice of the time and place of the hearing provided in subsection 4. [1989, c. 585, Pt. A, §7 (NEW).]

Notice may be made by personal service in hand by an officer duly qualified to serve civil process in this State or by certified mail, return receipt requested, to the last known address of the owner or owners. If the owner or owners are not known or can not be notified by personal service or certified mail, notice may be given by publication in the manner provided in subsection 4.

[ 2011, c. 655, Pt. GG, §45 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**2. Notice to tenant.** Notice shall be given to any tenant in the same manner notice is given to the owner of the property.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**3. Notice to the affected municipality.** Notice shall be given to the municipality in which the property to be acquired is located in the same manner notice is given to the owner of the property and shall be addressed to the municipal officers.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**4. Hearing.** The bureau shall hold a public hearing on the advisability of its proposed exercise of the right of eminent domain. Notice of the hearing must be made by publication in a newspaper of general circulation in the area of the taking and published once a week for 2 successive weeks, the last publication to be at least 2 weeks before the time appointed in the hearing. The hearing notice must include:

A. The time and place of the hearing; [1989, c. 585, Pt. A, §7 (NEW).]

B. A description of the land or easement to be taken; and [1989, c. 585, Pt. A, §7 (NEW).]

C. The name of the owners, if known. [1989, c. 585, Pt. A, §7 (NEW).]

[ 2011, c. 655, Pt. GG, §46 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 656, §A47 (AMD). 2011, c. 655, Pt. GG, §§45, 46 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

### §2161. CONDEMNATION PROCEEDINGS

At the time the bureau sends the notice in section 2160, the bureau shall file in the county commissioner's office in which the property to be taken is located and cause to be recorded in the registry of deeds in the county plans of the location of all lands, real estate, easements or interest therein, with an appropriate description and the names of the owners thereof, if known. When for any reason the bureau fails to acquire property that it is authorized to take, which is described in that location, or if the location so recorded is defective and uncertain, it may, at any time, correct and perfect the location and file a new description. In that case, the bureau is liable in damages only for property for which the owner had not previously been paid, to be assessed as of the time of the original taking, and the bureau is not liable for any acts that would have been justified if the original taking had been lawful. No entry may be made on any private lands, except to make surveys, until the expiration of 10 days from the filing, whereupon, possession may be had of all the lands, real estate, easements or interests therein and other property and rights as aforesaid to be taken, but title may not vest in the bureau until payment for the property is made. [2011, c. 655, Pt. GG, §47 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 656, §A48 (AMD). 2011, c. 655, Pt. GG, §47 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

### §2162. ASSISTANCE IN REGIONAL ASSOCIATION SITING

**1. Technical assistance.** Upon request by a regional association, the bureau may provide technical assistance to that regional association in the establishment of approved waste facilities, including assistance in planning, location, acquisition, development and operation of the site. The regional association shall describe fully the need and justification for the request. The bureau may request information from the regional association necessary to provide assistance.

[ 2011, c. 655, Pt. GG, §48 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**2. Submission of report recommending construction of state-owned facility.** When the bureau, in consultation with a regional association, finds that disposal capacity is projected to be needed for bulky wastes, construction or demolition waste or land-clearing debris and that the regional association is not able to pursue the siting, establishment and operation of a waste facility, the bureau may submit a report recommending the construction and operation of a state-owned solid waste disposal facility that will fulfill the disposal need to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report must include a review of disposal options outside of the State; a review of existing efforts to reduce, reuse, recycle, compost and incinerate the affected waste streams and the impact of these efforts on capacity requirements; a thorough economic analysis of the facility's expected costs; and commitments from entities to utilize the facility and projected revenues. The joint standing committee of the Legislature

having jurisdiction over natural resources matters may report out legislation authorizing the construction and operation of a state-owned solid waste disposal facility in response to a report submitted pursuant to this subsection.

[ 2011, c. 655, Pt. GG, §48 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1999, c. 736, §2 (RPR). 2011, c. 655, Pt. GG, §48 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

### **§2163. EXEMPT FACILITIES**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A68 (RP).

### **§2164. HOUSEHOLD AND SMALL GENERATOR HAZARDOUS WASTE**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1991, c. 517, §B13 (AMD). 1991, c. 808, §1 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 465, §A69 (RP).

### **§2165. REGULATION OF CERTAIN DRY CELL BATTERIES**

**1. Definitions.** As used in this section and section 2166, the following terms have the following meanings.

A. "Industrial, communications or medical facility" means a structure or site where 15 or more people are employed and:

- (1) Where articles are assembled, manufactured or fabricated;
- (2) Are included in major group 48 of the federal Office of Management and Budget, Standard Industrial Codes; or
- (3) Where medical services are provided. [1991, c. 808, §2 (NEW).]

B. "Rechargeable battery" means any nickel-cadmium or sealed lead-acid battery that is designed for reuse and is capable of being recharged after repeated use. [1991, c. 808, §2 (NEW).]

[ 1991, c. 808, §2 (NEW) .]

**2. Disposal ban.** A person employed directly or indirectly by a government agency, or an industrial, communications or medical facility may not knowingly dispose of a dry cell mercuric oxide battery or a rechargeable battery in a manner that is not part of a collection system established under subsection 4.

[ 1991, c. 808, §2 (NEW) .]



**3. User responsibility.** A government agency or industrial, communications or medical facility shall collect and segregate, by chemical type, the batteries that are subject to the disposal prohibition under subsection 2 and return each segregated collection either to the supplier that provided the facility with that type of battery or to a collection facility designated by the manufacturer of that battery or battery-powered product.

[ 1991, c. 808, §2 (NEW) .]

**4. Manufacturer responsibility.** A manufacturer of dry cell mercuric oxide or rechargeable batteries that are subject to subsection 1 shall:

A. Establish and maintain a system for the proper collection, transportation and processing of waste dry cell mercuric oxide and rechargeable batteries for purchasers in this State; [1991, c. 808, §2 (NEW) .]

B. Clearly inform each purchaser that intends to use these batteries of the prohibition on disposal of dry cell mercuric oxide and rechargeable batteries and of the available systems for proper collection, transportation and processing of these batteries; [1991, c. 808, §2 (NEW) .]

C. Identify a collection system through which mercuric oxide and rechargeable batteries must be returned to the manufacturer or to a manufacturer-designated collection site; and [1991, c. 808, §2 (NEW) .]

D. Include the cost of proper collection, transportation and processing of the waste batteries in the sales transaction or agreement between the manufacturer and any purchaser. [1991, c. 808, §2 (NEW) .]

[ 1991, c. 808, §2 (NEW) .]

**5. Supplier responsibility.** A final supplier of mercuric oxide and rechargeable batteries or battery-operated products is responsible for informing the purchasers that intend to use these batteries of the purchaser's responsibilities under this section.

[ 1991, c. 808, §2 (NEW) .]

## **6. Mercury content.**

[ 2011, c. 206, §35 (RP) .]

**7. Effective date.** Except as otherwise indicated, this section takes effect January 1, 1994.

[ 1991, c. 808, §2 (NEW) .]

**8. Penalty.** A violation of subsection 2 is a civil violation for which a forfeiture of not more than \$100 per battery disposed of improperly may be adjudged. A violation of subsection 4 is a civil violation for which a forfeiture of not more than \$100 may be adjudged. Each day that a violation continues or exists constitutes a separate offense.

[ 2011, c. 206, §36 (AMD) .]

## **9. Battery management plan.**

[ 1995, c. 656, Pt. A, §49 (RP) .]

### SECTION HISTORY

RR 1991, c. 2, §150 (COR). 1991, c. 808, §2 (NEW). 1995, c. 656, §A49 (AMD). 2009, c. 86, §2 (AMD). 2011, c. 206, §§35, 36 (AMD).

## §2166. RECHARGEABLE CONSUMER PRODUCTS

**1. Nonremoveable battery requirements.** A person may not sell, distribute or offer for sale in this State any product powered by a rechargeable battery primarily used or purchased to be used for personal, family or household purposes unless:

A. The battery may be easily removed by the consumer or is contained in a battery pack that is separate from the product and may be easily removed; and [1991, c. 808, §2 (NEW).]

B. The product, the battery itself and the package containing the product are all labeled, in a manner that is clearly visible to the consumer, indicating that the battery must be recycled or disposed of properly and that the type of electrode used in the battery is clearly identifiable. [1991, c. 808, §2 (NEW).]

[ 1991, c. 808, §2 (NEW) .]

### **2. Exemption.**

[ 1995, c. 656, Pt. A, §50 (RP) .]

**3. Effective date.** Except as otherwise indicated, this section takes effect January 1, 1994.

[ 1991, c. 808, §2 (NEW) .]

**4. Penalty.** A violation of this section is a civil violation for which a forfeiture of not more than \$100 per battery sold, distributed or offered for sale may be adjudged. Each day that a violation continues or exists constitutes a separate offense.

[ 1991, c. 808, §2 (NEW) .]

#### SECTION HISTORY

1991, c. 808, §2 (NEW). 1995, c. 656, §A50 (AMD).

## Subchapter 5: HOST COMMUNITY COMPENSATION AND FACILITY OVERSIGHT

### §2170. HOST COMMUNITY BENEFITS; APPLICATION LIMITED TO FACILITIES OWNED OR OPERATED BY THE BUREAU

This subchapter applies only to solid waste disposal facilities owned or operated by the bureau. Wherever in this subchapter the term "solid waste disposal facility" or "facility" is used, those terms may be construed only to mean a solid waste disposal facility owned or operated by the bureau. [2011, c. 655, Pt. GG, §49 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

#### SECTION HISTORY

1993, c. 310, §B2 (NEW). 1995, c. 656, §A51 (AMD). 2011, c. 655, Pt. GG, §49 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

### §2170-A. HOST COMMUNITY AGREEMENTS

The provisions of this section apply to a solid waste disposal facility owned or operated by the bureau. [2011, c. 655, Pt. GG, §50 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

**1. Issuance of license.** The department may not issue a license for a solid waste disposal facility unless a host community agreement is in place in accordance with this section.

[ 2007, c. 406, §3 (NEW) . ]

**2. Agreement required.** A solid waste disposal facility must have in place a host community agreement with all applicable host communities during the development and operation and through closure of that facility. A host community agreement for the purposes of this section must, when applicable, include provisions relating to the impact payments set forth in section 2176.

[ 2007, c. 406, §3 (NEW) . ]

#### SECTION HISTORY

2007, c. 406, §3 (NEW). 2011, c. 655, Pt. GG, §50 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

### §2171. CITIZEN ADVISORY COMMITTEE

The municipal officers of each municipality identified by the bureau as a potential site for a waste disposal facility and each contiguous municipality that may be affected by the construction or operation of that facility shall jointly establish a single citizen advisory committee within 60 days of notification pursuant to section 2155. [2011, c. 655, Pt. GG, §51 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) . ]

**1. Membership.** The committee must be comprised of citizens from each affected municipality, appointed by the municipal officers, including, but not limited to: a local health officer; a municipal officer; and at least 3 additional residents of the municipality, including abutting property owners and residents potentially affected by pollution from the facility. In addition, each committee may include members representing any of the following interests: environmental and community groups; labor groups; professionals with expertise relating to landfills or incinerators; experts in the areas of chemistry, epidemiology, hydrogeology and biology; and legal experts.

[ 2007, c. 598, §15 (AMD) . ]

**2. Meetings.** The committee shall meet as soon as practical following appointment of its members and shall select a chair from among its members. The committee shall establish procedures for the conduct of meetings.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**3. Responsibilities.** Each committee established under this section may:

A. Review proposed contracts, site analyses, applications and other documents relating to the location, construction, permitting and operation of the facility; [1993, c. 310, Pt. B, §5 (AMD) . ]

B. Hold periodic public meetings to solicit the opinions of residents concerning the facility and any permit applications, contracts or other provisions relating to the facility and the regional plan; [1993, c. 310, Pt. B, §5 (AMD) . ]

C. Provide the project developer and department with any alternative contract provisions, permit conditions, plans or procedures it considers appropriate; and [1993, c. 310, Pt. B, §5 (AMD) . ]

D. Serve as a liaison between the community and the project developer or the commissioner to facilitate communications during the development and operation of the facility, and provide residents with updated information about the project, including providing explanations of any technical terms. [1993, c. 310, Pt. B, §5 (AMD).]

[ 1993, c. 310, Pt. B, §5 (AMD) .]

**4. Unincorporated townships and plantations.** For the purposes of this subchapter, county commissioners shall act as municipal officers for unincorporated townships and assessors of plantations shall act as municipal officers for plantations.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1989, c. 869, §A12 (AMD). 1989, c. 890, §§A40,B291 (AMD). 1993, c. 310, §§B3-5 (AMD). 2007, c. 598, §15 (AMD). 2011, c. 655, Pt. GG, §51 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## §2172. DISPUTE RESOLUTION

In the event that the bureau and a host community cannot agree on the terms of a host community agreement pursuant to section 2170-A, the parties shall submit the dispute for resolution in accordance with this section. [2011, c. 655, Pt. GG, §52 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**1. Mediation.** The parties shall submit the dispute for mediation. The commissioner shall present to the parties a list of 5 experienced and qualified mediators. Each party may strike 2 names from the list. After each party has been afforded 2 opportunities to strike, either the sole remaining person or the first unchallenged person on the list must be appointed by the commissioner as the mediator assigned to mediate the dispute. In assembling the list of proposed mediators, the commissioner may consider the panel of mediators offered by the Office of Court Alternative Dispute Resolution Service created in Title 4, section 18-B.

[ 2007, c. 406, §4 (NEW) .]

**2. Arbitration.** If mediation fails to result in an agreement between the parties, the parties shall submit the dispute for arbitration. The commissioner shall present to the parties a list of 5 experienced and qualified arbitrators. Each party may strike 2 names from the list. After each party has been afforded 2 opportunities to strike, either the sole remaining person or the first unchallenged person on the list must be appointed by the commissioner as the arbitrator assigned to determine the dispute. In assembling the list of proposed arbitrators, the commissioner may consider the panels of arbitrators offered by the Office of Court Alternative Dispute Resolution Service created in Title 4, section 18-B or by the American Arbitration Association or its successor organization.

A. Both the bureau and the host community will be bound by the decision of the arbitrator. [2011, c. 655, Pt. GG, §53 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

B. Unless otherwise provided for in this subsection, the arbitration must be conducted in accordance with the rules of the American Arbitration Association or its successor organization for the conduct of commercial arbitration proceedings. [2007, c. 406, §4 (NEW) .]

C. Costs associated with the arbitration must be shared equally between the parties. [2007, c. 406, §4 (NEW) .]

D. The arbitrator shall submit the decision to the commissioner. [2007, c. 406, §4 (NEW) .]

E. Either party may appeal the decision of the arbitrator to the Superior Court. [2007, c. 406, §4 (NEW).]

[2011, c. 655, Pt. GG, §53 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1993, c. 310, §B6 (AMD). 1995, c. 656, §A52 (AMD). 2007, c. 406, §4 (RPR). 2011, c. 655, Pt. GG, §§52, 53 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

### **§2173. MUNICIPAL JURISDICTION OVER REGIONAL ASSOCIATION DISPOSAL FACILITIES**

A municipality may adopt a local ordinance authorizing the municipal officers to issue a local permit containing the same findings, conclusions and conditions contained in the license issued by the department for a solid waste disposal facility located within the municipality's jurisdiction. The municipal officers may also attach to the permit additional conditions for the operation of the solid waste disposal facility on any issues not specifically addressed in any condition of the department's license. These conditions may not unreasonably restrict the operation of the facility and must be attached to the local permit by the municipal officers within 90 days of issuance of the department's license or within 30 days of a final decision by the department to relicense the facility. [1993, c. 310, Pt. B, §7 (AMD).]

An enforcement action brought by the municipality to enforce local permit conditions does not preclude the State from bringing an action to enforce the conditions of any license issued by the State or any other provision of law. In addition, the State has a right to intervene in any enforcement action brought by a municipality under this section. A municipality that has adopted local permit conditions described in this section shall employ an inspector certified under section 2174 to enforce permit conditions. [2011, c. 655, Pt. GG, §54 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1993, c. 310, §B7 (AMD). 1995, c. 656, §A53 (AMD). 2011, c. 655, Pt. GG, §54 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

### **§2174. LOCAL INSPECTION AND ENFORCEMENT**

#### **1. Certification.**

[1993, c. 355, §62 (RP).]

**2. Information.** The host municipality of a solid waste disposal facility has a right to all information from the department and the bureau pursuant to Title 1, chapter 13, subchapter 1. All information provided under this subsection must be made available to the citizen advisory committee and the public by the host municipality.

A. The commissioner shall provide all of the following information to the municipal officers of the host municipality:

- (1) Copies of any inspection report of the facility within 5 working days of the preparation of the report;
- (2) Prompt notification of all enforcement or emergency orders for those facilities, including, but not limited to, abatement orders, cessation orders, final civil penalty assessments, consent orders and decrees and notices of violation;

(3) Copies of all air, soil and water quality monitoring data collected by the commissioner at such facilities, including leachate and ash testing results, within 5 working days after complete laboratory analysis becomes available to the commissioner; and

(4) Copies of all analyses of the data under subparagraph (3). [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §292 (AMD).]

B. The operator of the facility shall provide the host municipality copies of all air, soil and water quality monitoring data, including leachate and ash testing results, conducted by or on behalf of the operator, within 5 days after that information becomes available to the operator. [1989, c. 585, Pt. A, §7 (NEW).]

C. The municipality shall provide all of the following information to the commissioner:

(1) Copies of any inspection report of the facility within 5 working days of the preparation of the report;

(2) Prompt notification of all enforcement or emergency orders for those facilities, including, but not limited to, abatement orders, cessation orders, final civil penalty assessments, consent orders and decrees and notices of violation;

(3) Copies of all air, soil and water quality monitoring data collected by the municipality at such facilities, including leachate and ash testing results, within 5 working days after complete laboratory analysis becomes available to the municipality; and

(4) Copies of all analyses of the data under subparagraph (3). [1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §292 (AMD).]

[ 2011, c. 655, Pt. GG, §55 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

### **3. Inspection; emergency orders.**

[ 1993, c. 680, Pt. A, §38 (RP) .]

**4. Commissioner inspections.** Whenever any host municipality notifies the commissioner of an order issued pursuant to a local permit requirement under section 2173 and gives the commissioner reason to believe that any solid waste disposal facility is in violation of any law or regulation administered by the department, or any order or the condition of any permit issued pursuant to any law or rule administered by the department, the commissioner shall promptly conduct an inspection of the facility.

If the commissioner finds that there is insufficient information to believe that there is a violation, the commissioner shall, within 10 working days of a municipality's request for an inspection, provide to the municipality a written explanation of the commissioner's decision not to conduct an inspection.

[ 1993, c. 310, Pt. B, §8 (AMD) .]

#### **SECTION HISTORY**

1989, c. 585, §A7 (NEW). 1989, c. 890, §§A40,B292 (AMD). 1993, c. 310, §B8 (AMD). 1993, c. 355, §62 (AMD). 1993, c. 680, §A38 (AMD). 1995, c. 656, §A54 (AMD). 2011, c. 655, Pt. GG, §70 (AMD). 2011, c. 655, Pt. GG, §55 (AMD).

## **§2175. PROPERTY VALUE OFFSET**

**(REPEALED)**

#### **SECTION HISTORY**

1989, c. 585, §A7 (NEW). 1991, c. 794, §6 (RP).

## §2175-A. PROPERTY VALUE OFFSET

Owners of property, the value of which has been affected by a solid waste disposal facility, are eligible for reimbursement from the bureau for loss in property value directly attributable to the construction and operation of the facility. The bureau shall adopt rules to establish the formula and procedure for reimbursement, including, without limitation, definition of the impact area, a process for establishing baseline real estate values, a time frame within which the property value offset program will be in effect and an accounting of real estate trends in the area. [2011, c. 655, Pt. GG, §56 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

### SECTION HISTORY

1991, c. 794, §7 (NEW). RR 1993, c. 1, §137 (COR). 1993, c. 310, §B9 (AMD). 1995, c. 656, §A55 (AMD). 2011, c. 655, Pt. GG, §56 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## §2175-B. PAYMENT IN LIEU OF TAXES

The bureau shall annually pay a municipality an amount in lieu of taxes equal to the amount of property taxes on a solid waste disposal facility owned or operated by the bureau not paid to that municipality during the previous calendar year. In the case of an unorganized territory, the bureau shall annually pay the amount to the State Tax Assessor who shall deposit that amount in the Unorganized Territory Education and Services Fund established in Title 36, chapter 115. If the bureau disagrees with the amount determined to be due in lieu of taxes under this section, it may appeal to the State Board of Property Tax Review as provided in Title 36, section 271. [2011, c. 655, Pt. GG, §57 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

### SECTION HISTORY

1995, c. 465, §A70 (NEW). 1995, c. 465, §C2 (AFF). 2011, c. 655, Pt. GG, §57 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## §2176. IMPACT PAYMENTS

In addition to payment in lieu of taxes provided in section 2175-B, the bureau shall make impact payments to a municipality in which a solid waste disposal facility is located or, in the case of an unorganized territory, to the State Tax Assessor upon request by the community involved or by the State Tax Assessor. The bureau shall base its impact payments on measurable criteria including, without limitation: [2011, c. 655, Pt. GG, §58 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

**1. Roads.** Improvement, maintenance and repair of local roads directly affected by traffic to and from the facility;

[ 1993, c. 310, Pt. B, §11 (AMD) .]

**2. Emergency response.** Development and maintenance of adequate local emergency response capacity;

[ 2007, c. 406, §5 (AMD) .]

**3. Monitoring.** Financial support for on-site, municipally employed personnel or for other means determined necessary to enable the municipality to monitor the facility's compliance with state and local requirements; and

[ 2007, c. 406, §6 (AMD) .]

**4. Other issues.** Other issues determined on a case-specific basis by the applicant and bureau to be appropriate given the nature of the proposed facility.

[ 2011, c. 655, Pt. GG, §59 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1993, c. 310, §§B10,11 (AMD). 1995, c. 465, §A71 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A56 (AMD). 2007, c. 406, §§5-7 (AMD). 2011, c. 655, Pt. GG, §§ 58, 59 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## §2177. WATER SUPPLY MONITORING AND PROTECTION

Upon written request from persons owning land contiguous to a solid waste disposal facility, the bureau shall have quarterly sampling and analysis conducted of private water supplies used by the requestors for drinking water. The sampling and analysis must be conducted in a manner specified by and that meets criteria developed by the department. [2011, c. 655, Pt. GG, §60 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

If a facility adversely affects a public or private water supply by pollution, degradation, diminution or other means that result in a violation of the state drinking water standards as determined by the commissioner, the bureau shall restore the affected supply at no cost to the consumer or replace the affected supply with an alternative source of water that is of like quantity and quality to the original supply at no cost to the consumer. [2011, c. 655, Pt. GG, §60 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

**1. Extent of analysis.** Water supplies must be analyzed for all parameters or chemical constituents determined by the commissioner to be indicative of typical contamination from solid waste disposal facilities. The laboratory performing the sampling and analysis shall provide written copies of sample results to the bureau, the landowner and to the commissioner.

[ 2011, c. 655, Pt. GG, §60 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**2. Additional sampling required.** If the analysis indicates possible contamination from a solid waste disposal facility, the commissioner shall conduct, or require the bureau to conduct, additional sampling and analysis to determine more precisely the nature, extent and source of contamination. The commissioner shall, if necessary, require this sampling beyond the boundaries of the contiguous property.

[ 2011, c. 655, Pt. GG, §60 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**3. Written notice of rights.** On or before December 1, 1989, for permits issued under this chapter prior to October 1, 1989, and at or before the time of permit issuance for permits issued under this chapter after October 1, 1989, the bureau shall provide owners of contiguous land with written notice of their rights under this section on a form prepared by the commissioner.

[ 2011, c. 655, Pt. GG, §60 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1989, c. 890, §§A40,B293 (AMD). 1991, c. 517, §B14 (AMD). 1993, c. 310, §B12 (AMD). 1995, c. 656, §A57 (AMD). 2011, c. 655, Pt. GG, §60 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## Subchapter 6: LIABILITY AND LIMITATIONS



## §2181. EFFECT ON TORT CLAIMS

Nothing in this chapter may be construed or understood as in any way increasing any liability that may otherwise arise or be limited under Title 14, chapter 741. [1989, c. 585, Pt. A, §7 (NEW).]

### SECTION HISTORY

1989, c. 585, §A7 (NEW).

## §2182. ABILITY TO INDEMNIFY

Nothing in this subchapter may be construed to prevent any host municipality, regional association or the State from obtaining or giving such indemnities as may be appropriate in connection with the ownership, operation or control of a municipal solid waste facility. [1989, c. 585, Pt. A, §7 (NEW).]

### SECTION HISTORY

1989, c. 585, §A7 (NEW).

## §2183. EFFECT ON EXISTING CONTRACTS AND FACILITIES

Except as otherwise provided, nothing in this chapter may be construed to impair any contract in force upon the effective date of this chapter. [1989, c. 585, Pt. A, §7 (NEW).]

### SECTION HISTORY

1989, c. 585, §A7 (NEW).

## §2184. MUNICIPAL CONTRACTS

A municipality may contract with any person to carry out its duties for the recycling, transportation, collection and storage of municipal waste and source-separated materials to be recycled, if the recycling, transportation, collection or storage activity or facility is conducted or operated in a manner that is consistent with the provisions of this chapter, the state plan and the rules promulgated pursuant to this chapter. [1989, c. 585, Pt. A, §7 (NEW).]

**1. Existing contracts.** Except as otherwise provided in this chapter, nothing in this chapter may be construed to interfere with, or in any way modify, the provisions of any contract for municipal waste disposal, processing or collection with any regional association or municipality in force upon the effective date of this chapter or prior to the adoption of the state plan.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**2. Renewals.** No renewal of any existing contract upon the expiration or termination of the original term of the contract, and no new contract for municipal waste disposal, processing or collection may be entered into after the effective date of this chapter, if the renewal or new contract fails to conform to the applicable provisions of this chapter or interferes with the implementation of the state plan.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**3. Recycling activities; limited liability.** When the owner, lessee or occupant of premises as defined in Title 14, section 159-B undertakes recycling activities, as defined in Title 14, section 159-B on the premises, liability is limited as provided in Title 14, section 159-B.

[ 1991, c. 487, §2 (NEW) .]

### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1991, c. 487, §2 (AMD).

## Subchapter 7: FINANCE, FEES AND CONTRACTS

### Article 1: FEES AND CONTRACTS

#### §2191. FEES

The bureau shall establish reasonable fees for waste disposal services provided by the bureau. [ 2011, c. 655, Pt. GG, §61 (AMD); 2011, c. 655, Pt. GG, §70 (AFF). ]

##### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 656, §A58 (AMD). 2011, c. 655, Pt. GG, §61 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

#### §2192. PURPOSES OF THE FEES

The fees charged to users of state-owned facilities and established by the bureau under this article, by rule, provide revenue for the following purposes: [ 2011, c. 655, Pt. GG, §62 (AMD); 2011, c. 655, Pt. GG, §70 (AFF). ]

**1. Current expenses.** To pay the current expenses, either incurred directly or through contractual agreements with another party or parties, for operating and maintaining a facility or delivering a service and to provide for normal maintenance and replacement of equipment. Current expenses also include costs incurred under subchapter 5;

[ 2011, c. 655, Pt. GG, §62 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) . ]

**2. Interest.** To provide for the payment of interest on the indebtedness created or assumed by the bureau;

[ 2011, c. 655, Pt. GG, §62 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) . ]

**3. Indebtedness.** To provide an annual sum equal to not less than 2% nor more than 10% of the term indebtedness represented by the issuance of bonds created or assumed by the bureau, which sum must be turned into a sinking fund and there maintained to provide for the extinguishment of term indebtedness. The money set aside in this sinking fund must be devoted to the retirement of the term obligations of the bureau and may be invested in such securities as savings banks in the State are allowed to hold;

[ 2011, c. 655, Pt. GG, §62 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) . ]

**4. Principal payments.** To provide for annual principal payments on serial indebtedness created or assumed by the bureau;

[ 2011, c. 655, Pt. GG, §62 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) . ]

**5. Contingency reserve fund allowance.** To provide for a contingency reserve fund allowance by providing rates to reflect up to a 5% addition to yearly revenues over that required to operate the facility;

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**6. Closing reserve fund.** To provide for a closing and monitoring reserve fund by providing rates which, over the expected life span of the facility including the post-closure monitoring period, will generate the amount determined to be necessary by the department in its licensing process under chapter 13; and

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**7. Compliance costs.** To provide for the costs associated with licensing, compliance and enforcement efforts of the department.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 656, §A59,60 (AMD). 2011, c. 655, Pt. GG, §62 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

### **§2193. HOST MUNICIPALITY FEES**

The bureau may set fees under this article for the host municipality at a level lower than the fees charged to other municipalities or users, as long as the lower fees are set in a manner consistent with the rules adopted by the bureau. [2011, c. 655, Pt. GG, §63 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 656, §A61 (AMD). 2011, c. 655, Pt. GG, §63 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## **Article 2: MAINE SOLID WASTE MANAGEMENT FUND**

### **§2201. MAINE SOLID WASTE MANAGEMENT FUND ESTABLISHED**

The Maine Solid Waste Management Fund, referred to in this section as the "fund," is established as a nonlapsing fund to support programs administered by the bureau and the Department of Environmental Protection. The fund must be segregated into 2 subsidiary accounts. The first subsidiary account, called operations, receives all fees established and received under article 1. The 2nd subsidiary account, called administration, receives all fees established under this article and under Title 36, chapter 719 and all funds recovered by the department as reimbursement for departmental expenses incurred to abate imminent threats to public health, safety and welfare posed by the illegal disposal of solid waste. [2011, c. 655, Pt. GG, §64 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

Money in the fund not currently needed to meet the obligations of the department or bureau must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on these investments must be credited to the fund. [2011, c. 655, Pt. GG, §64 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

Funds related to administration may be expended only in accordance with allocations approved by the Legislature for administrative expenses directly related to the bureau's and the department's programs, including actions by the department necessary to abate threats to public health, safety and welfare posed by the disposal of solid waste. Funds related to fees imposed on the disposal of construction and demolition debris and residue from the processing of construction and demolition debris may be expended only for the state cost share to municipalities under the closure and remediation cost-sharing program for solid waste landfills established in section 1310-F. Funds related to fees imposed under this article may be expended to provide grant funding in accordance with the Maine Solid Waste Diversion Grant Program established in section 2201-B. The department shall, on an annual basis, conduct a review of the revenues presently in the fund and the revenues projected to be added to or disbursed from the fund in upcoming calendar years and determine what amount of revenues, if any, are available to provide grant funding under section 2201-B. If the department determines that there are revenues in the fund available in the upcoming calendar year to provide grant funding under section 2201-B, the department must ensure that such revenues are designated for use in accordance with section 2201-B by the end of that calendar year. Funds related to operations may be expended only in accordance with allocations approved by the Legislature and solely for the development and operation of publicly owned facilities owned or approved by the bureau and for the repayment of any obligations of the bureau incurred under article 3. These allocations must be based on estimates of the actual costs necessary for the bureau and the department to administer their programs, to provide financial assistance

to regional associations and to provide other financial assistance necessary to accomplish the purposes of this chapter. Beginning in the fiscal year ending on June 30, 1991 and thereafter, the fund must annually transfer to the General Fund an amount necessary to reimburse the costs of the Bureau of Revenue Services incurred in the administration of Title 36, chapter 719. Allowable expenditures include "Personal Services," "All Other" and "Capital Expenditures" associated with all bureau activities other than those included in the operations account. [2015, c. 461, §6 (AMD).]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1989, c. 596, §H (AMD). 1989, c. 927, §7 (AMD). 1991, c. 517, §B15 (AMD). 1991, c. 528, §§R12,13 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §§R12,13 (AMD). 1991, c. 824, §A88 (RPR). 1993, c. 410, §C8 (AMD). 1995, c. 395, §P8 (AMD). 1995, c. 395, §P11 (AFF). 1995, c. 465, §A72 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §§A62,63 (AMD). 1997, c. 1, §E2 (AMD). 1997, c. 24, §C15 (AMD). 1997, c. 526, §14 (AMD). 2001, c. 315, §5 (AMD). 2005, c. 618, §21 (AMD). 2011, c. 429, §7 (AMD). 2011, c. 544, §1 (AMD). 2011, c. 655, Pt. GG, §64 (AMD). 2011, c. 655, Pt. GG, §70 (AFF). 2015, c. 461, §6 (AMD).

### §2201-A. SUNSET; LEGISLATIVE INTENT

*(REPEALED)*

#### SECTION HISTORY

1989, c. 927, §8 (NEW). 1993, c. 410, §EE1 (RP).

### §2201-B. MAINE SOLID WASTE DIVERSION GRANT PROGRAM

**1. Establishment.** The Maine Solid Waste Diversion Grant Program, referred to in this section as "the program," is established to provide grants to public and private entities to assist in the development, implementation or improvement of programs, projects, initiatives or activities designed to increase the diversion of solid waste from disposal in the State.

[ 2015, c. 461, §7 (NEW) .]

**2. Administration.** The department shall administer the program and may dispense revenue from the Maine Solid Waste Management Fund established under section 2201 for the purposes of the program based on approved grant requests from public and private applicants. The department may provide grants for the documented costs of application proposals in accordance with the priorities in subsection 5. Costs incurred by the department in the development and administration of the program may be paid with revenue in the Maine Solid Waste Management Fund in a manner consistent with section 2201.

[ 2015, c. 461, §7 (NEW) .]

**3. Audit.** Revenue from the Maine Solid Waste Management Fund established under section 2201 disbursed by the program is subject to audit as determined by the department, and the recipient of any such funding must agree to be subject to audit and to cooperate with the auditor as a condition of receiving funding.

[ 2015, c. 461, §7 (NEW) .]

**4. Eligibility criteria.** The department may disburse grants under the program to any public or private entity demonstrating that a proposed program, project, initiative or activity is, in the department's determination, likely to increase the diversion of solid waste from disposal within a particular community, municipality or region or the State, including, but not limited to, municipal or regional composting,

organics recovery or recycling programs, including the establishment of such programs or the purchase of infrastructure, equipment or other items necessary to implement such programs or improve existing programs; programs designed to provide equipment for or otherwise support residential composting and recycling; programs or business models designed to collect, transport for processing or process organic or recyclable materials; pilot programs designed to evaluate the feasibility of targeted composting, organics recovery, recycling or other waste management programs or initiatives; and initiatives or programs designed to educate certain categories of individuals or the general public about composting, organics recovery or recycling or to otherwise improve individual or community waste management practices.

[ 2015, c. 461, §7 (NEW) .]

**5. Priorities.** The department shall give highest priority in the awarding of funds under this section to programs, projects, initiatives or activities proposed by municipal or regional association applicants that otherwise meet the department's eligibility criteria. The department shall also give priority to applicants proposing programs, projects, initiatives or activities that are likely to increase the removal and recycling of organic materials from municipal waste streams. The awarding of funds under this section must be consistent with the solid waste management hierarchy established under section 2101 and the food recovery hierarchy established under section 2101-B and must be prioritized to provide the most benefit to the State in terms of increasing the diversion of solid waste from disposal.

[ 2015, c. 461, §7 (NEW) .]

**6. Conditions of approval.** The department may require, as a condition of grant approval, that an applicant demonstrate its ability to provide in-kind contributions relating to the grant applied for or to provide a certain level of matching funding to supplement the grant applied for.

[ 2015, c. 461, §7 (NEW) .]

**7. Rules.** The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2015, c. 461, §7 (NEW) .]

#### SECTION HISTORY

2015, c. 461, §7 (NEW).

## §2202. FEES

**1. Fees established.** The department shall establish procedures to charge fees specified in this article and pursuant to the requirements of this article. All fees collected by the department under this article must be deposited into the Maine Solid Waste Management Fund.

[ 1995, c. 465, Pt. A, §73 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

### 2. Application.

[ 2011, c. 544, §2 (RP) .]

**3. Payment.** A person who delivers solid waste to a solid waste disposal facility shall pay all fees established under this article to the operator of the solid waste disposal facility.

[ 1993, c. 310, Pt. C, §2 (NEW) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1993, c. 310, §C2 (AMD). 1995, c. 465, §A73 (AMD). 1995, c. 465, §C2 (AFF). 2011, c. 544, §2 (AMD).

## §2203. FEE ON SPECIAL WASTE

(REPEALED)

### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1989, c. 869, §§A13,20 (RPR). 1991, c. 517, §B16 (AMD). 1995, c. 465, §A74 (AMD). 1995, c. 465, §C2 (AFF). 1999, c. 385, §6 (RP).

## §2203-A. WASTE HANDLING FEES

**1. Fees.** Unless otherwise provided by rule adopted in accordance with subsection 3, fees are imposed in the following amounts to be levied for solid waste that is disposed of at commercial, municipal, state-owned and regional association landfills.

Asbestos	\$5 per cubic yard
Oil-contaminated soil, gravel, brick, concrete and other aggregate	\$25 per ton
Waste water facility sludge	\$5 per ton
Ash, coal and oil	\$5 per ton
Paper mill sludge	\$5 per ton
Industrial waste	\$5 per ton
Sandblast grit	\$5 per ton
All other special waste	\$5 per ton
Municipal solid waste ash	\$1 per ton
Front end process residue (FEPR)	\$1 per ton
Construction and demolition debris and residue from the processing of construction and demolition debris	\$2 per ton

[ 2015, c. 461, §8 (AMD) . ]

### **2. Exceptions.** Notwithstanding subsection 1:

A. A municipal or regional association landfill that has accepted 12,000 tons or more of special waste, other than municipal solid waste ash, asbestos and oil-contaminated soil, gravel, brick, concrete and other aggregate, in calendar year 1998 shall continue to pay \$2 per ton to the department for those categories of waste accepted in that calendar year; [1999, c. 385, §7 (NEW) . ]

B. A municipal or regional association landfill shall continue to pay \$2 per ton to the department on all categories of special waste other than municipal solid waste ash, asbestos and oil-contaminated soil, gravel, brick, concrete and other aggregate that was generated by the municipality or regional association and accepted for disposal in its landfill in calendar year 1998; [2011, c. 544, §3 (AMD) . ]

C. A municipal or regional association landfill that has accepted 550 tons or more of oil-contaminated soil, gravel, brick, concrete and other aggregate in calendar year 1998 shall pay \$5 per ton for that category of waste; and [2011, c. 544, §3 (AMD) . ]

D. A fee may not be imposed under this section on construction and demolition debris or residue from the processing of construction and demolition debris disposed of at a municipal or regional association landfill that is less than 6 acres in size and accepts only inert fill, construction and demolition debris, debris from land clearing and wood wastes. [2011, c. 544, §3 (NEW) . ]

[ 2011, c. 544, §3 (AMD) . ]

**3. Rules.** The department may adopt rules imposing per ton or per cubic yard fees on any of the types of waste listed in subsection 1 disposed of at a commercial, municipal, regional association or state-owned solid waste landfill. Fees imposed pursuant to this subsection must be consistent with the solid waste management hierarchy established under section 2101 and the food recovery hierarchy established under section 2101-B. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2015, c. 461, §9 (NEW) .]

#### SECTION HISTORY

1999, c. 385, §7 (NEW). 1999, c. 564, §1 (AMD). 2011, c. 544, §3 (AMD). 2015, c. 461, §§8, 9 (AMD).

### §2204. MUNICIPAL SOLID WASTE DISPOSAL SURCHARGE

Unless otherwise provided by rule adopted in accordance with subsection 4, the department shall impose a fee of \$2 per ton on any municipal solid waste disposed of at a commercial, municipal, regional association or state-owned landfill, except that there is no fee on municipal solid waste generated by a municipality that owns the landfill accepting it or that has entered into a contract with a term longer than 9 months for disposal of municipal solid waste in that landfill facility. [2015, c. 461, §10 (AMD).]

#### 1. Landfill surcharge.

[ 1999, c. 385, §8 (RP) .]

#### 2. Recycling progress.

[ 1995, c. 465, Pt. A, §75 (RP); 1995, c. 465, Pt. C, §2 (AFF) .]

#### 3. Imported municipal solid waste.

[ 1999, c. 385, §8 (RP) .]

**4. Rules.** The department may adopt rules imposing per ton fees on any municipal solid waste disposed of or received for processing at a commercial, municipal, regional association or state-owned solid waste disposal facility, solid waste processing facility, incineration facility or solid waste landfill. Fees imposed pursuant to this subsection must be consistent with the solid waste management hierarchy established under section 2101 and the food recovery hierarchy established under section 2101-B. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2015, c. 461, §11 (NEW) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1989, c. 869, §§A14,20 (AMD). 1991, c. 517, §B17 (RPR). 1993, c. 85, §§1,2 (AMD). 1993, c. 310, §C3 (AMD). 1995, c. 465, §§A75,76 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A64 (AMD). 1999, c. 385, §8 (AMD). 2015, c. 461, §§10, 11 (AMD).

### §2205. FEE PAYMENTS

Each operator of a solid waste disposal facility shall make the fee payment quarterly. The fee must be paid to the department on or before the 20th day of April, July, October and January for the 3 months ending the last day of March, June, September and December. [1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

**1. Quarterly reports.** Each fee payment must be accompanied by a form prepared and furnished by the department and completed by the operator. The form must state the total weight or volume of solid waste disposed of at the facility during the payment period and provide any other aggregate information determined necessary by the department to carry out the purposes of this chapter. The form must be signed by the operator.

[ 1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

**2. Timeliness of payment.** The operator is deemed to have made a timely payment of the fee if the operator complies with all of the following:

A. The enclosed payment is for the full amount owed pursuant to this section and no further department action is required for collection; [1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

B. The payment is accompanied by the required form and the form is complete and accurate; and [1989, c. 585, Pt. A, §7 (NEW) .]

C. The letter transmitting the payment that is received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received, unless an alternative date is agreed upon in writing by the operator and the department. [1999, c. 385, §9 (AMD) .]

[ 1999, c. 385, §9 (AMD) .]

**3. Discount.** Any operator that makes a timely payment of the fee as provided in this section is entitled to apply against the fee payable a discount of 1% of the amount of the fee collected.

[ 1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

**4. Refunds.** Any operator who believes the fee was overpaid by the operator may file a petition for refund to the department. If the department determines that the operator has overpaid the fee, the department shall refund to the operator the amount due the operator, together with interest at a rate established by the department.

[ 1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

**5. Alternative proof of payment.** For purposes of this section, presentation of a receipt indicating that the payment was mailed by registered or certified mail on or before the due date is evidence of timely payment.

[ 1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

**6. Interest.** If an operator fails to make a timely payment of the fee, the operator shall pay interest on the unpaid amount due at the rate established by the department from the last day for timely payment to the date paid.

[ 1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

**7. Additional penalty.** In addition to the interest provided in subsection 6, if an operator fails to make timely payment of the fee, 5% of the amount of the fee must be added to the amount actually due if the failure to file a timely payment is for not more than one month, with an additional 5% for each additional month, or fraction of a month, during which the failure continues, not exceeding 25% in the aggregate.

[ 1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]



**8. Assessment notice.** If the department determines that any operator has not made a timely payment of the fee, the department shall send the operator a written notice of the amount of the deficiency, within 30 days of determining the deficiency. When the operator has not provided a complete and accurate statement of the weight or volume of waste received at the facility for the payment period, the department may estimate the weight or volume in the notice.

The operator charged with the deficiency has 30 days to pay the deficiency in full or, if the operator wishes to contest the deficiency, forward the amount of the deficiency to the department for placement in an escrow account with the Treasurer of State or any bank in the State, or post an appeal bond in the amount of the deficiency. The bond must be executed by a surety licensed to do business in the State and be satisfactory to the department. Failure to forward the money or appeal bond to the department within 30 days results in a waiver of all legal rights to contest the deficiency.

If, through the administrative or judicial review of the deficiency, it is determined that the amount of deficiency must be reduced, the department shall within 30 days remit the appropriate amount to the operator, with any interest accumulated by the escrow deposit.

The amount determined after administrative hearing or after waiver of administrative hearing is payable to the department and is collectible.

If any amount due under this subsection remains unpaid 30 days after receipt of notice of the deficiency, the department may order the operator of the facility to cease receiving any solid waste until the amount of the deficiency is completely paid.

[ 1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

**9. Filing of appeals.** Notwithstanding any other provision of law, all appeals of final department actions concerning the fee must be filed with the department pursuant to section 2206.

[ 1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §A77 (AMD). 1995, c. 465, §C2 (AFF). 1999, c. 385, §9 (AMD).

## §2206. HEARINGS AND APPEALS

The department shall establish rules governing procedures for hearings and appeals under this article consistent with Title 5, chapter 375. [1995, c. 465, Pt. A, §77 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §A77 (AMD). 1995, c. 465, §C2 (AFF).

## Article 3: REVENUE OBLIGATION SECURITIES AND MORTGAGE LOANS

## §2211. DEFINITIONS

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 585, Pt. A, §7 (NEW).]

**1. Bond.** "Bond" means revenue obligation security.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**1-A. Agency.** "Agency" means the Finance Authority of Maine.

[ 1995, c. 465, Pt. B, §6 (NEW); 1995, c. 465, Pt. C, §2 (AFF) .]

**2. Cost of project.** "Cost of project" means the cost or value of land, buildings, real estate improvements, labor, materials, machinery and equipment, property rights, easements, franchises, financing charges, interest, engineering and legal services, plans, specifications, surveys, cost estimates, studies and other expenses as may be necessary or incidental to the development, construction, acquisition, financing and placing in operation of an eligible project. In addition to these costs, reserves for payment of future debt on any revenue obligation securities may be included as part of the cost of the project.

Any obligation or expenses incurred by the State, the agency, a regional association, a municipality or any private person in connection with any of the items of cost specified in this subsection related to revenue obligation securities may be included as part of the cost and reimbursed to the State, the agency, regional association, municipality or person out of the proceeds of the securities issued.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**3. Eligible collateral.** "Eligible collateral" means an eligible project.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**4. Eligible project.** "Eligible project" means any waste facility or the capital costs of any waste disposal service including, but not limited to, real property, personal property, machinery and equipment and related expenses.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**5. Facility.** "Facility" means an eligible project or eligible collateral.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**6. Financial document.** "Financial document" means a lease, installment sale agreement, conditional sale agreement, note, mortgage, loan agreement or other instrument pertaining to an extension of financial assistance.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**7. Financing assistance.** "Financing assistance" or "financial assistance" means guarantees, leases, insurance, financing credits, loans or the purchase or discounts thereof, letters of credit, financing assistance payments, grants or other financial aid.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**8. Financing institution.** "Financing institution" or "financial institution" means any bank, trust company, national banking association, savings bank, savings and loan association, federal savings and loan association, industrial bank, mortgage company, insurance company, credit union, local development corporation or any other institution or entity authorized to do business in this State, or any state or federal agency that customarily provides financing assistance.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**9. Lease.** "Lease" means a contract providing for the use of a project or portions of a project for a term of years for a designated or determinable rent. A lease may include an installment sale contract. A lease may include other terms as the agency may permit or require.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**10. Lessee.** "Lessee" means a tenant under a lease and may include an installment purchaser.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**11. Loan.** "Loan" or "mortgage loan" means an extension of credit made in consideration of a written promise of repayment or any other conditions which may be established by the agency, performance of which may be secured by a mortgage.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**12. Maturity date.** "Maturity date" means the date on which final payment is due as provided in a note, revenue obligation security or other financial document.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**13. Mortgage.** "Mortgage" means an agreement granting a lien on, or a security interest in, eligible collateral with certain conditions and includes, but is not limited to, a mortgage of real estate, an assignment of rents, a pledge or a security agreement.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**14. Mortgagee.** "Mortgagee" means a grantee or obligee under, or a transferee or successor of a grantee or obligee under, a mortgage.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**15. Mortgage payments.** "Mortgage payments" means payments required by or received on account of a mortgage or any other financial document, including, but not limited to, payments covering interest, installments of principal, taxes, assessments, loan insurance premiums and hazard insurance premiums.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**16. Mortgagor.** "Mortgagor" means the grantor or party giving rights to eligible collateral pursuant to a mortgage and includes the successors or assigns of a mortgagor.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**17. Note.** "Note" means an evidence of indebtedness and includes a revenue obligation security.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**18. Rent or rental.** "Rent or rental" means payments under a lease.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**19. Revenue obligation security.** "Revenue obligation security" or "security" means a note, bond, interim certificate, debenture or other evidence of indebtedness, payment of which is secured by a pledge of revenues, as provided in this article or by assignment or pledge of other eligible collateral.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1995, c. 465, §B6 (AMD). 1995, c. 465, §C2 (AFF).

## §2212. GENERAL POWERS

The agency may, in addition to its other powers and in furtherance of the purposes of this chapter, assist itself or applicants, who shall be limited to municipalities and regional associations, in the financing of eligible projects by issuing revenue obligation securities; by issuing or providing securities for mortgage loans; drafting financial documents, trust agreements and other contracts; and arranging the financing and negotiating for the sale of the securities. The agency may contract with the Finance Authority of Maine to administer the provisions of this article. [1989, c. 585, Pt. A, §7 (NEW).]

The agency may also: [1989, c. 585, Pt. A, §7 (NEW).]

**1. Kinds of projects.** Acquire, construct, reconstruct, maintain, renew, replace or provide financing assistance for eligible waste facilities, waste disposal services or recycling projects;

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**2. Securities for projects.** Issue revenue obligation securities to pay the cost of or to provide financial assistance for acquisition, construction, reconstruction, renewal or replacement of eligible projects. Any single issue of securities may provide for the cost of, or for financial assistance for, acquisition, construction, reconstruction, renewal or replacement of any one or more eligible projects which may be separate, unconnected and distinct. Any issue, the proceeds of any issue, or any revenue obligation securities shall, except as specifically authorized by the Legislature, meet the requirements of the Internal Revenue Code of 1986, as amended, relating to exempt facility bonds;

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**3. Acquire securities.** Issue revenue obligation securities to acquire one or more issues of revenue obligation securities issued by municipalities or to acquire any other bond not eligible for purchase pursuant to Title 30-A, chapter 225. Any single issue of securities may provide funds for the acquisition of revenue obligation securities of one or more municipalities or of bonds for one or more eligible projects which may be separate, unconnected and distinct;

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**4. Refunding securities.** Issue revenue refunding obligation securities as provided to refund any outstanding revenue obligation securities issued under this article;

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**5. Serve as broker or agent.** Serve as a broker, agent or other financial intermediary for the secondary marketing of obligations issued or incurred in connection with the financing of eligible projects and for the encouragement of the flow of private funds for capital investment;

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**6. Facilities.** Plan, carry out, acquire, lease and operate facilities and provide for the construction, reconstruction, improvement, alteration or repair of any facility or any part of a facility;

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**7. Acquisition and disposal of property.** Acquire or enable an applicant to acquire, upon reasonable terms from funds provided under this article, the lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands, including lands under water and riparian rights, that are located within the State and considered necessary or convenient for the construction or operation of any eligible waste project, and dispose of them;

[ 1989, c. 585, Pt. A, §7 (NEW); 1989, c. 869, Pt. A, §15 (AMD) .]

**8. Contracts.** Make and enter into all financial documents and other contracts and trust agreements securing revenue obligation securities issued under this article, provided all expenses are payable solely from funds made available under this article;

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**9. Consent to modification of contracts, lease or agreement.** To the extent not forbidden under its contract with the holders of bonds, consent to any modification of any contract, lease or agreement of any kind to which the agency is a party;

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**10. Employment of specialists.** Employ consulting and other engineers, attorneys, accountants, construction and financial experts, superintendents, managers and other necessary employees and agents and fix their compensation, provided all expenses are payable solely from funds made available under this subchapter;

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**11. Government contracts.** Enter into contracts with regional associations, municipalities, the State or a federal agency relating to any eligible solid waste project;

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**12. Government aid.** Accept loans or grants for the planning, construction or acquisition of any eligible solid waste project from a municipality, an authorized agency of the State or a federal agency and enter into agreements with the agency respecting the loans or grants. In the case of all loans, grants or other aid involving pollution-control facilities, the consent of the commissioner must first be obtained, notwithstanding section 362;

[ 1989, c. 585, Pt. A, §7 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §294 (AMD) .]

**13. Private aid.** Receive and accept aid and contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which these loans, grants and contributions may be made;

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**14. Applicability.** Provide financial assistance by means of leases that are not subject to Title 14, section 6010. Leases made under this section may provide that obligations of the lessees are unconditional; and

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**15. Application.** Provide financial assistance by means of revenue obligation securities which are not subject to Title 32, chapter 135, relating to dealers in securities.

[ 2005, c. 65, Pt. C, §20 (AMD) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1989, c. 869, §A15 (AMD). 1989, c. 890, §§A40,B294 (AMD). 2005, c. 65, §C20 (AMD).

## §2213. ISSUANCE OF REVENUE OBLIGATION SECURITIES

**1. Notice of intent to issue bonds; actions to contest validity.** The agency may provide, at one time or from time to time, for the issuance of revenue obligation securities of the agency for the purposes authorized in this chapter. No revenue obligation securities of the agency may be issued until:

A. The project has been determined to be consistent with the state plan pursuant to section 1310-AA, if applicable, and the necessary permits have been obtained from the department; [1995, c. 465, Pt. A, §78 (AMD); 1995, c. 465, Pt. C, §2 (AFF).]

B. A notice of the intent of the agency to issue the securities is published at least once in a newspaper of general circulation in the region in which the project is to be located:

(1) No later than 14 days after the date on which the agency decides to issue revenue obligation securities under this subchapter;

(2) Describing the general purpose or purposes for which the securities are to be issued;

(3) Stating the maximum principal amount of the proposed securities; and

(4) Including a statement as to the time within which any petition to contest the issuance of the securities must be commenced. [1989, c. 585, Pt. A, §7 (NEW); 1989, c. 869, Pt. A, §16 (AMD).]

Any action or proceeding in any court to contest the issuance of the securities must be started within 30 days after the date of the publication required by paragraph B and otherwise shall be governed by Title 5, chapter 375, subchapter VII. For the purposes of this subchapter and the Maine Administrative Procedure Act, Title 5, chapter 375, the later date of newspaper publication required by paragraph B shall constitute the final agency action with respect to the issuance of the securities. After the expiration of the 30-day period of limitation, no right of action or defense founded upon the invalidity of the issuance of the securities may be opened to question in any court upon any grounds.

[ 1995, c. 465, Pt. A, §78 (AMD); 1995, c. 465, Pt. C, §2 (AFF) .]

**2. Treasurer of State as agent.** The Treasurer of State shall, at the direction of the agency, act as the agency's agent for the sale and delivery of revenue obligation securities and anticipatory notes. The Treasurer of State shall assist the agency in the preparation, issuance, negotiation and sale of the securities and notes and provide reasonable advice and management assistance. The agency may employ further counsel or assistants or act in its own behalf, provided that the sale and delivery of revenue obligation securities and anticipatory notes shall be carried out at the agency's direction with and through the Treasurer of State.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**3. Conclusive authorization.** All revenue obligation securities of the agency shall be conclusively presumed to be fully authorized and issued under the laws of the State, and any person or governmental unit shall be estopped from questioning their authorization, sale, issuance, execution or delivery by the agency.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**4. Maturity; interest.** The securities of each issue of revenue obligation securities shall be dated, mature at a time or times not exceeding 20 years from the date of the securities and bear interest at a rate or rates determined by the agency. At the option of the agency, the securities may be made redeemable before maturity at a price or prices and under terms and conditions fixed prior to issuance.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**5. Form.** The agency shall determine the form of the securities, including any attached interest coupons, the manner of execution of the securities, the denomination or denominations of the securities and the place or places for payment of principal and interest, which may be at any financial institution within or without the State. Revenue obligation securities shall be executed in the name of the agency by the manual or facsimile signature of the authorized official or officials. Any attached coupons shall be executed with the manual or facsimile signature of the authorized official or officials. Signatures and facsimiles of signatures on securities and coupons are valid for all purposes even if the authorized official ceases to hold office before delivery of the securities. The securities may be issued in coupon or registered form or both as the agency may determine. Provision may be made for the registration of any coupon securities to principal alone and to both principal and interest, and for the reconversion into coupon securities of any securities registered to both principal and interest. In addition to this subsection, the agency may provide for transfer of registration of the agency's registered revenue obligation securities by book entry on the records of the entity designated for that purpose and may enter into such contractual arrangements as may be necessary to accomplish these purposes. In the event a book entry method of transfer is used, principal of and interest on those registered securities shall be payable to the registered owner shown in the book entry, the owner's legal representatives, successors or transferees.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**6. Sale.** The agency may sell the securities at a public or private sale, in a manner and at a price the agency determines to be in the best interest of the agency. The agency shall not sell the securities to any firm, partnership, corporation or association, including an affiliate or subsidiary, which is a party to any contract pertaining to the financed project or which is to rent, purchase, lease or otherwise occupy premises constituting part of the project. The agency may sell the securities to a seller of the project if the project is to be used and operated by a 3rd party.

[ 1989, c. 585, Pt. A, §7 (NEW) . ]

**7. Proceeds.** The proceeds of each issue shall be used solely for the authorized purposes and shall be disbursed as provided in the securing trust agreement or other document. Administration costs incurred by the agency under this program may be drawn from those proceeds. If the proceeds are less than the cost of the project, by error in the estimate or otherwise, additional securities may be issued in a like manner to provide the amount of the deficit and, unless otherwise provided in the securing trust agreement or other document, the additional securities are deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the securities first issued for the same purpose. The agency may place limits or restrictions on the issuance of additional revenue obligation securities through the securing trust agreement or other document. The agency may provide for the replacement of mutilated, destroyed or lost securities. Revenue obligation securities may be issued under this subchapter without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the occurrence of any conditions or things other than those proceedings, conditions or

things which are specifically required by this subchapter. Notwithstanding any of the other provisions of this subchapter, or of any recitals in any securities issued under this subchapter, all such securities are deemed to be negotiable instruments issued under the laws of this State.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**8. Credit not pledged.** Except as provided in this subsection, securities issued under this subchapter shall not constitute any debt or liability of the State or of any municipality in the State or any political subdivision of the State, or of the agency or a pledge of the faith and credit of the State or of any such municipality or political subdivision, but shall be payable solely from the revenues of the project or projects for which the securities are issued or from other eligible collateral or the revenues or proceeds of other eligible collateral pledged to the payment of the revenue obligation securities and all such securities shall contain on the securities' face a statement to that effect. The issuance of securities under this subchapter shall not directly or indirectly or contingently obligate the State or any municipality or political subdivision to levy or to pledge any form of taxation whatever or to make any appropriation for payment.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**9. Anticipatory borrowing.** In anticipation of the sale of securities under this article, the agency may issue temporary notes and renewal notes, the total face amount of which does not exceed at any one time outstanding the authorized amount of the securities. The period of anticipatory borrowing shall not exceed 3 years and the time within which the securities are to become due shall not be extended by the anticipatory borrowing beyond the term permitted by law.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**10. Environmental protection.** Revenue obligation securities of the agency may not be issued for a project until the commissioner certifies to the agency that all licenses required by the department with respect to the project are issued or that none are required. Any subsequent enlargement or addition to the project for which approval is sought from the agency requires certification by the commissioner.

[ 1989, c. 585, Pt. A, §7 (NEW); 1989, c. 890, Pt. A, §40 (AFF); 1989, c. 890, Pt. B, §295 (AMD) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1989, c. 869, §A16 (AMD). 1989, c. 890, §§A40,B295 (AMD). 1995, c. 465, §A78 (AMD). 1995, c. 465, §C2 (AFF).

## §2214. TRUST AGREEMENTS OR OTHER DOCUMENTS

**1. Trust agreements or other documents.** At the discretion of the agency, revenue obligation securities may be issued under this subchapter pursuant to a trust agreement or other document. The trust agreement or other document may:

A. Pledge or assign the revenues or proceeds of the project or projects or other eligible collateral;

[1989, c. 585, Pt. A, §7 (NEW).]

B. Set forth the rights and remedies of the security holders and other persons and contain any reasonable and legal provisions for protecting the rights and remedies of the security holders; [1989, c. 585, Pt. A, §7 (NEW).]

C. Restrict the individual right of action by security holders; and [1989, c. 585, Pt. A, §7 (NEW) .]

D. Include covenants setting forth the duties of the agency and user in relation to:

(1) Acquisition of property or eligible collateral;



- (2) Construction, reconstruction, renewal, replacement and insurance of the project or eligible collateral;
- (3) Rents to be charged or other payments to be made for use;
- (4) Payment for the project or eligible collateral; and
- (5) Custody, safeguarding and application of all money. [1989, c. 585, Pt. A, §7 (NEW) .]

Any financial institution may furnish indemnifying bonds or pledge the securities as may be required by the agency.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**2. Mortgages.** To further secure the payment of the revenue obligation securities, the trust agreement or other document may mortgage or assign the mortgage of the project, or any part of the project, and create a lien on or security interest in any or all of the project. In the event of a default with respect to the revenue obligation securities, the trustee, mortgagee or other person may be authorized by the trust agreement or other document containing a mortgage or assignment of a mortgage to take possession of, hold, manage and operate all or any part of the mortgaged property and, with or without taking possession, to sell or from time to time lease the property in accordance with law. Any security interest granted by the authority under this chapter may be created and perfected in accordance with the Uniform Commercial Code, Title 11, Article 9-A.

[ 1999, c. 699, Pt. D, §29 (AMD); 1999, c. 699, Pt. D, §30 (AFF) .]

**3. Additional provisions.** Any trust agreement or other document may contain provisions which shall be a part of the contract with holders of revenue obligation securities as to:

- A. Pledging any specified revenues or assets of the agency to secure the payment of the securities, subject to agreements with existing holders of securities; [1989, c. 585, Pt. A, §7 (NEW) .]
- B. Pledging all or any part of the unencumbered revenues or assets of the agency to secure the payment of securities, subject to agreements with existing holders of securities; [1989, c. 585, Pt. A, §7 (NEW) .]
- C. Setting aside, regulating and disposing of reserves or sinking funds; [1989, c. 585, Pt. A, §7 (NEW) .]
- D. Limitations on the purpose to which the proceeds of sale of securities may be applied and the pledge of the proceeds to secure the payment of the securities or of any issue of securities; [1989, c. 585, Pt. A, §7 (NEW) .]
- E. Limitations on the issuance of additional securities; [1989, c. 585, Pt. A, §7 (NEW) .]
- F. The terms on which additional securities may be issued and secured and the refunding of outstanding or other securities; [1989, c. 585, Pt. A, §7 (NEW) .]
- G. The procedure, if any, by which the terms of any contract with holders of securities may be amended or abrogated, including the proportion of the holders which must consent and the manner in which the consent may be given; [1989, c. 585, Pt. A, §7 (NEW) .]
- H. Limitations on the amount of money to be expended by the agency for operating expenses of the agency; [1989, c. 585, Pt. A, §7 (NEW) .]
- I. Vesting in a trustee or trustees such property, rights, powers and duties in trust as the agency may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the holders of the securities under this subchapter, and limiting or abrogating the right of the holders of the securities to appoint a trustee under this chapter or limiting the rights, powers and duties of the trustee; [1989, c. 585, Pt. A, §7 (NEW) .]

J. Defining the acts or omissions to act which will constitute a default in the obligations and duties of the agency to the holders of the securities and providing for the rights and remedies of the holders of the securities in the event of default, including, as a matter of right, the appointment of a receiver, but only if the rights and remedies are not inconsistent with the laws of the State and other provisions of this subchapter; and [1989, c. 585, Pt. A, §7 (NEW).]

K. Any other matters, of like or different character, which in any way affect the security or protection of the holders of the securities. [1989, c. 585, Pt. A, §7 (NEW).]

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**4. Expenses; pledges.** All expenses incurred in carrying out a trust agreement or financial document may be treated as a part of the cost of the operation of the project. All pledges of revenue or eligible collateral under this subchapter shall be valid and binding from the time when the pledge is made. All the revenues or eligible collateral pledged and later received by the agency shall immediately be subject to the lien of the pledges without any physical delivery or further action under the Uniform Commercial Code or otherwise. The lien of the pledges shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise, against the agency, irrespective of whether the parties have notice thereof.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**5. Other provisions.** A trust agreement or financial document may contain other provisions the agency deems reasonable and proper for the security of the security holders.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1999, c. 699, §D29 (AMD). 1999, c. 699, §D30 (AFF).

## §2215. RENTALS AND REVENUES

**1. Provisions.** Before issuing revenue obligation securities, the agency shall determine that there shall at all times be revenues and funds sufficient to:

A. Pay the principal and interest of the securities as they become due and payable and, in its discretion, to create and maintain reserves for that purpose; and [1989, c. 585, Pt. A, §7 (NEW).]

B. Pay the cost of maintaining and, where applicable, repairing the project unless provision is made in the financial document or other contract for maintenance and, where applicable, repair. [1989, c. 585, Pt. A, §7 (NEW).]

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**2. Sinking fund.** All project rentals and other revenues, except those required in subsection 1, paragraph B or to provide reserves for maintenance and, where applicable, repair, may be set aside at regular intervals as provided in the trust agreement or other document and deposited to the credit of a sinking fund charged with payment of the interest and principal of the securities as they fall due, any necessary charges of paying agents for paying principal and interest and the redemption price or the purchase price of securities retired by call or purchase. Use of money deposited to the credit of the sinking fund shall be subject to regulations prescribed in the trust agreement or other document. Except as may otherwise be provided in the trust agreement or other document, the sinking fund shall be a fund for the benefit of all securities issued for the project or projects without distinction or priority of one over another.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**3. Trust funds.** All money received under this subchapter shall be deemed trust funds, to be held and applied solely as provided in this subchapter. Any officer to whom, or any bank, trust company or other fiscal agency or trustee to which, the money shall be paid shall act as trustees of the money and shall hold and apply it for the purposes of this subchapter, subject to the requirements of this subchapter, the trust agreement or other applicable document.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW).

### §2216. REMEDIES

Any holder of revenue obligation securities or coupons issued under this subchapter and the trustee under any trust agreement, except as restricted by the trust agreement or applicable document, may, by appropriate legal action, protect and enforce any and all rights under the laws of this State or granted under this subchapter, the trust agreement or other document, including the appointment of a receiver, and may enforce and compel the performance of all duties required by this subchapter, the trust agreement or other document to be performed by the agency, including the collecting of rates, fees and charges for the use of the project. Any proceeding shall be brought for the benefit of all holders of the securities and any coupons. [1989, c. 585, Pt. A, §7 (NEW).]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW).

### §2217. REVENUE REFUNDING SECURITIES

The agency may provide for the issuance of revenue refunding securities of the agency to refund any outstanding revenue securities issued under this subchapter or to refund any obligations or securities of any municipality, including the payment of any redemption premiums and any interest accrued or to accrue to the date of redemption, and, if deemed advisable for the agency, to construct or enable the construction of improvements, extensions, enlargements or additions of the original project. The agency may provide for the issuance of revenue obligation securities of the agency for the combined purpose of refunding any outstanding revenue obligation securities or revenue refunding securities issued under this subchapter or to refund any obligations or securities of any municipality, including the payment of redemption premiums and interest accrued or to accrue and paying all or any part of the cost of acquiring or constructing or enabling the acquisition or construction of any additional project or part of any improvements, extensions, enlargements or additions of any project. The issuance of the securities, the maturities and other details, the rights and remedies of the holders and the rights, powers, privileges, duties and obligations of the agency shall be governed by the provisions of this subchapter insofar as they are applicable. [1989, c. 585, Pt. A, §7 (NEW) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW).

### §2218. TAX EXEMPTION

Revenue obligation securities issued under this article shall constitute a proper public purpose and the securities, their transfer and the income from them, including any profits made on their sale, shall at all times be exempt from taxation within the State, whether or not those securities, their transfer or the income from them, including any profits on their sale, are subject to taxation under the United States Internal Revenue Code. [1989, c. 585, Pt. A, §7 (NEW).]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW).

## §2219. LEASEHOLD OR OTHER INTERESTS OF LESSEE TAXABLE

The interest of the user of any project is subject to taxation in the manner provided for similar interests in Title 36, section 551, subject to Title 36, sections 655 and 656. [1989, c. 585, Pt. A, §7 (NEW) .]

### SECTION HISTORY

1989, c. 585, §A7 (NEW) .

## §2220. BONDS AS LEGAL INVESTMENTS

The revenue obligation securities of the agency and any loan or extension of credit issued under this article shall be legal investments in which all public officers and public bodies of the State, its political subdivisions, all regional associations and municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries and all other persons who are now or may later be authorized to invest bonds or other obligations of the State, may properly and legally invest funds, including capital, in their control or belonging to them. The revenue obligation securities and any loan or extension of credit which is issued under this subchapter are also made securities, which may properly and legally be deposited with all public officers and bodies of the State or any agency or political subdivisions and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the State is now or may later be authorized by law. [1989, c. 585, Pt. A, §7 (NEW) .]

### SECTION HISTORY

1989, c. 585, §A7 (NEW) .

## §2221. CAPITAL RESERVE FUNDS; OBLIGATION OF STATE

**1. Capital reserve fund.** The agency may create and establish one or more capital reserve funds and may pay into any such capital reserve fund any money appropriated and made available by the State for the purposes of any such fund, any proceeds of sale by the agency of revenue obligation securities to the extent determined by the agency and any other money available to the agency. For purposes of this section, the amount of any letter of credit, insurance contract, surety bond, indemnification agreement or similar financial undertaking available to be drawn on and applied to obligations to which money in any such fund may be applied shall be deemed to be and counted as money in the capital reserve fund.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**2. Application.** Money in any capital reserve fund created pursuant to subsection 1, except as provided in this section, shall be used solely with respect to revenue obligation securities or mortgage loans, repayment of which is secured by any such fund and solely for the payment of principal, accrued interest and costs and expenses chargeable to the mortgage loan or securities, the purchase or redemption of the securities, including any fees or premiums or the payment of interest on the securities. Money in excess of the reserve requirement set forth in subsection 3 may be transferred to other funds and accounts of the agency.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**3. Reserve requirement.** The agency may provide that money in any such fund shall not be withdrawn at any time in an amount which would reduce the amount of any such fund to less than the maximum amount of principal and interest becoming due and payable under any applicable trust agreement or other agreement

in the next succeeding 12-month period, the amount being referred to as the capital reserve requirement, except for the purpose of paying the amount due and payable with respect to revenue obligation securities or mortgage loans, repayment of which is secured by any such fund.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**4. Issuance limit.** The agency may provide that it shall not issue revenue obligation securities if the capital reserve requirement with respect to securities outstanding and then to be issued and secured by any such fund will exceed the amount of any such fund, including the amount available to be drawn on any letter of credit given to secure the capital reserve requirement, at the time of issuance, unless the agency, at the time of issuance of the securities, shall deposit in any such fund from proceeds of the securities to be issued, or from other sources, an amount which, together with the amounts then in any such fund and amounts available to be drawn under any letter of credit, will not be less than the capital reserve requirement.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**5. Security for mortgage loans.** With respect to any mortgage loans which may be secured under this article, the agency may provide that such mortgage loans shall be secured by one or more capital reserve funds established pursuant to subsection 1. Any commitment with respect to a mortgage loan executed and delivered pursuant to this section shall be conclusive evidence of the eligibility of the mortgage loan for capital reserve fund security and the validity of any such commitment or contract shall be incontestable in the hands of a mortgage lender except for fraud or misrepresentation on the part of the mortgage lender. Mortgages secured by capital reserve funds under this section are made legal investments for all insurance companies, trust companies, banks, investment companies, savings banks, savings and loan associations, executors, trustees and other fiduciaries, public and private pension or retirement funds and other persons.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**6. Appropriation.** On or before December 1st, annually, the agency shall certify to the Governor the amount, if any, necessary to restore the amount in any capital reserve fund, to which this subsection is stated in any written agreement, the trust agreement or other document to apply, to the capital reserve requirement. The Governor shall pay directly from the State Contingent Account to any such fund as much of the amount as is available in that account, as determined by the Governor, and shall transmit directly to the Legislature certification and a statement of the amount, if any, remaining to be paid. The certified amount shall be appropriated and paid to the agency during the current state fiscal year.

[ 1989, c. 585, Pt. A, §7 (NEW) .]

**7. Obligations and securities outstanding.** The agency may not have at any one time outstanding obligations or revenue obligation securities to which subsection 6 is stated in any agreement or the trust agreement or other document to apply in principal amount exceeding an amount equal to \$50,000,000. This subsection constitutes specific legislative approval to issue up to \$50,000,000 in tax-exempt revenue obligation securities. The amount of revenue obligation securities issued to refund securities previously issued may not be taken into account in determining the principal amount of securities outstanding, provided that proceeds of the refunding securities are applied as promptly as possible to the refunding of the previously issued securities. In computing the total amount of revenue obligation securities of the agency that may at any time be outstanding for any purpose, the amount of the outstanding revenue obligation securities that have been issued as capital appreciation bonds or as similar instruments shall be valued as of any date of calculation at their then current accreted value rather than their face value.

[ 1989, c. 585, Pt. A, §7 (NEW); 1989, c. 869, Pt. A, §17 (AMD) .]

#### SECTION HISTORY

1989, c. 585, §A7 (NEW). 1989, c. 869, §A17 (AMD).

## §2222. TAXABLE BOND OPTION

With respect to all or any portion of any issue of any bonds or any series of bonds which the agency may issue in accordance with the limitations and restrictions of this subchapter, the agency may covenant and consent that the interest on the bonds shall be includable, under the United States Internal Revenue Code of 1986, as amended, or any subsequent corresponding internal revenue law of the United States, in the gross income of the holders of the bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders under the United States Internal Revenue Code or any subsequent law. The foregoing grant of power shall not be construed as limiting the inherent power of the State or its agencies under any other provision of law to issue debt, the interest on which is includable in the gross income of the holders of the interest under the United States Internal Revenue Code or any subsequent law. [1989, c. 585, Pt. A, §7 (NEW).]

### SECTION HISTORY

1989, c. 585, §A7 (NEW).

## Subchapter 8: INCINERATION PLANT FINANCIAL STATEMENTS

## §2231. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 676, §1 (NEW).]

**1. Incineration facility.** "Incineration facility" means a facility that accepts municipal solid waste for consideration and disposes of the waste through combustion, including combustion for the generation of heat, steam or electricity. A facility that incinerates municipal solid waste in amounts that constitute less than 2% by weight of its fuel is not an incineration facility.

[ 1991, c. 676, §1 (NEW) .]

**2. Solid waste.** "Solid waste" means useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including, but not limited to, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse. "Solid waste" includes fuel, whether solid, liquid or gas, derived from materials such as those listed.

[ 1991, c. 676, §1 (NEW) .]

**3. Tipping fee.** "Tipping fee" means any fee, rate, toll or other charge that an incineration facility charges for disposal of solid waste from the facility's customers.

[ 1991, c. 676, §1 (NEW) .]

**4. Waste source.** "Waste source" means any entity that pays a tipping fee to an incineration facility.

[ 1991, c. 676, §1 (NEW) .]

### SECTION HISTORY

1991, c. 676, §1 (NEW).

## §2232. REPORTING

An incineration facility shall submit an annual report to the department no later than 90 days after the end of the incineration facility's fiscal year. For reasonable cause shown and upon written application by an incineration facility, the department may grant an extension of the 90-day period. The report must be certified by an appropriate executive officer of the incineration facility as being complete and accurate. The

department may prescribe the form of the annual report and the number of copies that must be submitted. The report must include the following information: [ 2011, c. 655, Pt. GG, §65 (AMD); 2011, c. 655, Pt. GG, §70 (AFF). ]

**1. Waste.** The total weight in tons of all solid waste received by the incineration facility in the last completed fiscal year and each month of that year and a breakdown of these totals according to the waste sources;

[ 1991, c. 676, §1 (NEW) . ]

**2. Tipping fee.** A schedule of various tipping fees imposed by the incineration facility on the incineration facility's municipal and commercial customers over the last completed fiscal year including an identification of all changes in those fees and a similar schedule of fees to be imposed on municipal and commercial customers for the next fiscal year. The tipping fees for commercial customers must be set out separately by each rate charged to each category of commercial customer;

[ 1991, c. 676, §1 (NEW) . ]

**3. Revenue.** The total revenue of the incineration facility from all sources for the last completed fiscal year and each month of that year. Revenue figures must identify revenues from each revenue source, including, but not limited to, tipping fees and any revenue from sales of electricity to transmission and distribution utilities;

[ 1999, c. 657, §27 (AMD) . ]

**4. Expenditures.** The total expenditures of the incineration facility during the last completed fiscal year including details of those expenditures as required by the department; and

[ 2011, c. 655, Pt. GG, §66 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) . ]

**5. Other information.** Any other information required by the department.

[ 2011, c. 655, Pt. GG, §66 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) . ]

#### SECTION HISTORY

1991, c. 676, §1 (NEW). 1995, c. 656, §§A65,66 (AMD). 1999, c. 657, §27 (AMD). 2011, c. 655, Pt. GG, §§65, 66 (AMD). 2011, c. 655, Pt. GG, §70 (AFF) .

### §2233. CIVIL VIOLATION

A person that violates any requirement of section 2232 commits a civil violation for which a forfeiture not to exceed \$200 may be adjudged. Each day of a violation is considered a separate offense. [1991, c. 676, §1 (NEW). ]

#### SECTION HISTORY

1991, c. 676, §1 (NEW) .

### §2234. CIVIL PENALTY

A person that certifies a report under section 2232 as being complete and accurate and who knows that the report is either incomplete or inaccurate is subject to a civil penalty not to exceed \$500, payable to the State. This penalty is recoverable in a civil action. [1991, c. 676, §1 (NEW). ]

#### SECTION HISTORY

1991, c. 676, §1 (NEW).

## §2235. USE OF FILES

The department shall keep on file for public inspection and use all reports submitted under this subchapter. [2011, c. 655, Pt. GG, §67 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

### SECTION HISTORY

1991, c. 676, §1 (NEW). 1995, c. 656, §A67 (AMD). 2011, c. 655, Pt. GG, §67 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

## §2236. LIMITATION

Nothing in this subchapter may be construed to create or expand any authority of the department over financial, organizational or rate regulation of incineration facilities. [2011, c. 655, Pt. GG, §68 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

### SECTION HISTORY

1991, c. 676, §1 (NEW). RR 1993, c. 1, §138 (COR). 1995, c. 656, §A68 (AMD). 2011, c. 655, Pt. GG, §68 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

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